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HOOPA-YUROK INDIAN RESERVATION

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON HOOPA-YUROK INDIAN RESERVATION

JUNE 30, 1988
SACRAMENTO, CA

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CONTENTS

Statements:

Page
- Bowers, Lavina Mattz, Trinidad, CA ... 17
- Colegrove, Willie, chairman, Hoopa Valley Business Council, Hoopa, CA ... 25
- George, Mervin, tribal council member, Hoopa Valley Tribe ... 30
- Haberman, Dorothy, Klamath, CA ... 13
- Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Select Committee on Indian Affairs ... 1
- Lara, Walter, Sr., Trinidad, CA ... 21
- Lyall, Roanne, Ashland, OR ... 11
- Nix, Peter, Hoopa, CA ... 18
- Risling, Dale, tribal council member, Hoopa Valley Tribe ... 27
- Theodoratus, Dorthea, professor, Fair Oaks, CA ... 3
- Winter, Jacque, Hoopa, CA ... 9

APPENDIX

Prepared statements:

- Colegrove, Willie (with attachments) ... 49
- Ehrlich, Carolyn George (with attachments) ... 96
- George, Mervin ... 61
- Lara, Walter, Sr. (with attachments) ... 101
- Lyall, Roanne ... 46
- Newton, Nell Jessup, associate professor of law, Columbus School of Law, Catholic University of America ... 62
- McCovey, Walter, Jr., Interim Chairman, Pohlik-Lah Tribe (with attachments) ... 108
- Risling, Dale ... 56
- Theodoratus, Dorthea (with attachments) ... 33

Additional material submitted for the record:

- Barnes, Richard L., counsel for Simpson Timber Co., letter to Senator Inouye dated September 16, 1988 ... 99

HOOPA-YUROK INDIAN RESERVATION

THURSDAY, JUNE 30, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Sacramento, CA.

The committee met, pursuant to notice, at 9 a.m., at Sacramento Board of Supervisors Council Chambers, 700 H Street, Room 1450, Sacramento, CA, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

Staff present: Patricia Zell, Chief Counsel.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The **CHAIRMAN**. The committee will come to order.

Before proceeding I would like to call upon two very distinguished leaders of the Hupa and Yurok tribes to invoke divine blessings. May I now call upon Ms. Winnie George for her prayers?

Ms. **GEORGE**. [Prayer offered in Native American tongue.]

The **CHAIRMAN**. I thank you very much, Ms. George.

May I now call upon Mr. James?

Mr. **JAMES**. I had an operation on my knee, and it hurts. But to see my people in the condition we are in hurts deep down. I'm going to pray for all our people.

Most of us are all Yurok and Hupas. All through the history the Indian dances were together.

[Prayer offered in Native American tongue.]

The **CHAIRMAN**. I thank you very much, Mr. James.

Since this is the first trip ever taken by the Senate Select Committee to visit the State of California, I believe I should say a few words about this committee before proceeding.

The Select Committee on Indian Affairs has really never been considered to be an important committee. Hopefully that has changed in recent months.

When I assumed the Chair of this committee two years ago, it was a committee without a hearing room, it was the only committee without computers, and it was the committee with the smallest staff. All of that has changed.

We now have the most advanced computers and the staff. We also have our own hearing room, and the staff has been upgraded. But, more importantly, since we are dealing with the problems of the Native American Indians, I decided that the staff should be made up of men and women who are not only knowledgeable, but sensitive to the problems of American Indians.

So the first thing I did as chairman was to communicate with leaders throughout Indian Country to seek their wisdom and their suggestions.

On the recommendation of these leaders I appointed the senior staff, and I would like to present to you the senior staff before we proceed.

The committee is most fortunate to have as the staff director—the person in charge of the staff—for the first time we have an Indian. He is an enrolled member of the Chippewa Cree Indian tribe, and his home is in Sioux land. He is a banker—he was one when I hired him. He is also a prominent lawyer. His pay at that time was twice what the committee offers him, but he was willing to take this pay cut because of his commitment and dedication to the cause. He is the great-great-grandson of a great Chief, Sitting Bull. I am pleased to present to you the Staff Director, Mr. Alan Parker. [Applause.]

The second position on the committee is that of legal counsel—the person who decides upon the laws, legislation, and questions of law. I was very fortunate to have with us the Chief Editor of the "American Indian Law Review." She is also a doctor in psychology. She is a prominent lawyer who could very easily get two or three times the pay we offer her. She is a Navajo, and she wanted very much to be in this endeavor to be of assistance to all of you. I am pleased to present to you our Chief Legal Counsel, Doctor Patricia Zell. [Applause.]

We have added a new member of the staff. He is a health specialist. He has a graduate degree in public health. He is an enrolled member of the Crow Creek Sioux tribe. I am very pleased to present to you Mr. Richard Bad Moccasin. [Applause.]

And representing the office of United States Senator Alan Cranston, the senior senator from the State of California, I am pleased to present to you Ms. Lena Aoke and Mr. Russell Lowe. [Applause.]

We also have with us a man from the Southwest. He is one of the important members of the staff. He comes from Arizona—a member of the Navajo tribe, Mr. Dan Lewis. [Applause.]

It may interest you to know that 75 percent of the staff are Indians. [Applause.]

When I first became chairman of the committee I promised the tribal leaders that within two years every effort would be made to visit all of Indian Country. I have had extensive visitations in the Pacific Northwest. I have gone to the Southwest. I just came back from the Plains. I will be travelling to the Southeast to Oklahoma and Mississippi and Florida, and finally I will return to California.

I have spent more time in Indian Country in the last two years than I have in my State of Hawaii. That is how important I consider the problems of our first citizens. I will continue to pursue solutions in this manner.

In my first statement as chairman I told my committee and my colleagues in the United States Senate that for too long Indian problems have been met with Washington solutions, and I noted that solutions made in Washington for Indian problems have very seldom worked. That is the reason I have spent much time meeting with Indians, because I think Indians are wise enough to solve their own problems.

Very often some of the Indian tribes would prefer to take the easy way and let Washington decide, but then 10, 20, or 30 years from now your people will be crying because solutions made by men and women who have never seen your reservations, men and women who have never suffered your anguish can never be sufficiently sensitive to your needs.

Today we come to listen to your words and hopefully gather your wisdom on a matter that has been troubling all of you for many years. It is a problem that exists between Indians. Up until now you have asked the courts—and some of you are now asking the Congress—to resolve your problems.

I would hope that, as you did in the days of old, you will get together and resolve this matter among yourselves, because—believe me—a court-imposed decision or congressionally-imposed decision may be helpful at this moment, but in the long run, as you have found in other areas of this nation, it will be very painful.

I decided to take this special trip to California for two reasons: because of the hundreds of letters and telegrams I have been receiving from the Hoopa Valley Reservation, from the Hupas, and from the Yuroks, I decided that although we have no legislation before us in the Senate, we should come here to gather information in the event we are confronted with this measure before us.

This hearing is not to receive testimony on House Bill 4469, the bill that Congressman Bosco has introduced. That bill is not before us, therefore I did not ask the Congressman to testify today.

I am here to listen to your words and try to understand your feelings and your emotions that are involved so I can advise my committee members on what is involved.

We want to examine the history of your reservation and to receive the views and objectives of your residents as to how these problems that are confronting you can be best solved.

In the event legislation should be enacted in the House of Representatives, I can assure you that we will have another formal hearing to consider that bill.

So with that, I would like to begin our proceedings and call upon our first witness, Professor Dorthea Theodoratus of Fair Oaks, CA. Welcome.

STATEMENT OF DORTHEA THEODORATUS, PROFESSOR, FAIR OAKS, CA.

Dr. THEODORATUS. Thank you very much. Thank you for inviting me.

My task is generally to cover the history of the area, and I will do that as briefly as possible. What I hope to do is to provide background information on the crucial issues facing the people of the Hoopa Valley Indian Reservation in Humboldt County, California.

My purpose is to provide background information on the establishment of and the events leading to litigation concerning the reservation. These issues have become extremely serious. They threaten long-standing relationships among Indian people, and carry the potential of replacing past harmony with acrimony to the detriment of all those affiliated with the Hoopa Valley Reservation.

Other litigation concerning this area in recent years—and there have been many lawsuits—centered on subsistence—for example, fishing rights—and first amendment religious rights as in the Gasque Orleans road case that just went through the Supreme Court.

These issues, along with the focus of this hearing, place a tremendous burden on the Indian people of the area, and this deserves our immediate attention.

The situation today at the Hoopa Valley Reservation is the result of a long chronology. It begins at contact with non-Indian settlers, and continues through the latter half of the nineteenth century when the reservation was established and enlarged, and ends with litigation in the twentieth century. This has resulted in an on-going trust relationship between reservation residents and the U.S. Government.

The more than 130 years flow of events has created a situation which is extremely complex and, to this point, unresolved.

I'd like to touch on three major themes: first, the traditional societies ancestral to the people now affiliated with the reservation; second, with the establishment of the reservation; and, third, the events of the twentieth century, particularly the milestone legal cases which were initiated in the early 1960's.

The protracted nature of this recent legislation, particularly Jesse Short et al. versus the United States and Lillian Blake Puzz et al. versus the United States is, in part, a product of a highly variable interpretation, and, in many cases, misinterpretation of the nature of the traditional society in the region, and the facts and intentions surrounding the Indian's relationship with the government.

We are talking about the Northwest corner of California, and this is an area of very lush environment. At the time of non-Indian contact, the traditional societies occupying this region based their lives on a very sophisticated system of fishing, hunting, and gathering, which produced resources sufficient to facilitate their creation of stable villages, a system of class and social stratification, and labor specialization.

Diet was based on what, at that time, seemed an inexhaustible natural resource; that is, of course, primarily fishing—and that resource has ended in much litigation—and also game and vegetable products.

While it may be said that there are many cultural differences between the peoples of this region, it is far more true to characterize these differences as variation in the expression of a common cultural adaptation within a particular abundant environment.

Of particular importance is the nature of the social institutions or social organization of the pre-1850 era. None of the groups existed as tribal entities as we might expect in other areas in the United States. They didn't have the same kind of political systems or centralized economic system of such. But they did have in common, cultural similarities in such areas as religious expression, material culture, architecture, and other cultural elements.

Each of the groups shared a common language; that is: each was different from the other language. It is via the analysis of these languages that anthropologists gave them the names to which we now refer, such as Yurok, Tolowa, Karuk, and Hupa.

We must not be misguided by the belief that tribal names now used implied a tribal identity at the time of contact. Rather, the groups appear to have been based upon affiliations within and between stable villages, and a particular importance needs to be given to familial ties and relationships.

The villages had a very highly-developed class system, and also important to remember, a very complex legal system. They dealt wisely with all sorts of transgressions that would put our system to shame.

Trade, ceremony, and marriage relationships were not ever confined to the linguistic boundaries we now know as Hupa, Yurok, and so forth. Rather, such relationships between groups were common and, in fact, these relationships remain so today.

The onslaught of settlement in this region began in the early 1850's with a brief but flourishing gold rush on the Trinity and Klamath Rivers. This gold rush didn't produce the virtual destruction of the society in quite the same way that it did in the rest of California, so we have to consider that differently.

There were violent clashes, though, between the Indian people and the miners, and the traditional people of the area emerged largely in tact, though, as cultural entities. Their greater battles were to come somewhat later in the more persistent relationship of permanent settlers—and the U.S. military and the Federal Government.

The Hoopa Valley Indian Reservation was concerned about the establishment of it, as well as the status of the predecessor Indian reservations in the area. This is undoubtedly the most variably interpreted aspect of the historic record.

The issues raised concern the reasons the regulations were established—who were the residents to be—the responsibilities of the Federal Government, and the intentions, both expressed and implied, of Federal administration subsequent to establishment.

In the early 1850's the Government sent treaty commissioners to California to prepare a series of treaties. The now-famous 18 unratified treaties were the result, and California Indian people were left in a precarious and largely landless state.

The treaties were prepared to create a relationship with the indigenous populations, thereby releasing the majority of California into the public domain, and subsequently to non-Indian settlers.

Unfortunately, this orderly process was doomed from the outset since, by 1849, the State was overrun by gold-diggers who dismantled and reshaped the California Indian society.

The condition of the Indians in California prompted radical action, and in 1853 the government was granted authority to establish five reservations in California and to protect the surviving Indian populations from the degradation of settlers.

This resulted in forced migrations to reservations, intermingling of peoples, and the breakdown of traditional social institutions. One of these was the Klamath River Reservation, which extended along the Klamath River from the mouth at the Pacific one mile in width on each side up the river for a distance of about 20 miles.

Attempts were apparently made to encourage the people to practice agriculture, and they called this the Klamath Indian Reservation, and they referred to the people as "Klamaths." These are the same people who mostly now are referred to as Yurok.

In 1861 this reservation was flooded. It was devastated and destroyed all the tribal land, and in spite of the fact that the river still held the major resources—again we're talking about salmon and other fish that are traditionally important to the Yurok and others—the reservation, itself, went into decline as an administrative entity.

People who had been removed from their homeland to this reservation now returned to their previous homeland, although some people did stay.

Subsequent to the flood, many proposals were put forth to return this military reservation back to the public domain for distribution.

In 1864 President Lincoln was empowered to create reservations. In one case one of these reservations was specifically to be in the Northern district of California, and the BIA quickly located the tract that is now known as "The Square"—a 12-mile square reservation—and this was under this act.

About the same time, they treatied with the Indian communities of the area, and this treaty required a cessation of hostilities on the part of the main groups and referenced the creation of the Hoopa Valley Indian Reservation. Apparently this treaty was never ratified, although its wording and interpretation of its intent are critical in the recent litigation.

The Hoopa Valley Reservation was informally established in 1876, and, as I said, now is referred to as "The Square."

The Klamath Reservation continued to languish as pressure built to create a reservation on the Klamath River which would carry the status afforded to other reservations that were created in California, and eventually the area known as "The Extension" was added to the existing Hoopa Valley Reservation in 1891, and portions of the older reservation, to the mouth of the Klamath, were returned to the public domain.

The configuration of the Hoopa Valley Reservation has remained essentially unchanged since 1891, and that is the area of our concern today.

The origins of The Extension require some comment. In 1864 the President was required to find four reservations, and it was under that discretion that he chose to enlarge the Hoopa Valley Reservation instead of adding another, and then he put forward other reservations instead of the one at Hoopa, so we got the extension as an adjunct to The Square.

In the twentieth century the residents of the Hoopa Valley Reservation engaged in an increasingly-binding relationship with the federal bureaucracy headed by the BIA. Much of the residential land in the reservation was allotted to individual residents who, therefore, control it as personal property. Parts of the reservation were left unallotted, and these lands remained in trust status for the reservation.

In the 1950's, timber exploitation of these areas began in earnest with the production of income to the reservation for non-allotted land. Administrative entities on the reservation were established in the 1930's. By the 1950's the Hupa Business Council began to control the resources in the square and the income produced therefrom.

It is this situation which has resulted in protracted litigation represented by the Short versus U.S. and Puzz versus U.S. cases, and these are milestone cases.

In the *Short* case, suit was brought against the United States in 1963 by members of the reservation who believed that they were being deprived of their rightful share of the substantial income produced by timber harvest from the unallotted land on The Square. These were mainly Yurok people, or people of Yurok ancestry, who lived on The Extension, or people who were otherwise deemed ineligible, or who have been denied admittance to the Hoopa Valley Tribe and, therefore, had not received their share of the revenues.

The argument presented by the plaintiffs was that the actions of 1891 which created the extension resulted in a single unit known as the Hoopa Valley Reservation, and all members of that reservation should share equally in the income and benefits occurring on that reservation whether or not that income resulted from The Square or from The Extension.

The defendants, which ultimately included the Hoopa Valley Tribe by recognition of the court, claimed that The Square and The Extension were, in essence, separate entities, and that residents of The Square who had certain qualifications concerning ancestry and tenure were the rightful recipients of the revenues generated by exploitation of The Square. Consequently, those living off The Square who did not satisfy membership requirements were not entitled to a portion of the revenues.

The case was heard in 1973 in the Court of Claims, and the lengthy decision was in favor of the plaintiffs. The case was eventually taken to the Supreme Court, and that court decided not to hear the case.

The Court of Claims decision states clearly its interpretation of the historical fact that The Square was not intended solely for the benefit of one group, that The Square and the Extension formed a single entity without reference to separation of districts or separation of benefits resulting from the commercial use of any portion of that reservation.

As a result, the administrative actions of the BIA, and perhaps by inference the Hoopa Valley Tribe and Hupa Business Council, were considered by the court illegal. The plaintiffs where, therefore, entitled to recover a proportionate share of the income.

The *Jesse Short* case didn't include litigation on the income matter, and subsequent litigation was aimed at the nature of the settlement and at the intervening administration of the income.

And so the tribe or the Department of Interior has held in trust a portion of the income from timber sales since 1974.

The *Puzz* case, decided in court in April of 1988, was based on allegations—again by individuals primarily of Yurok descent—who claimed that the continuing relationship between the government and Hupa Business Council was affectively depriving them of a voice in the administration of the reservation. These claims were based largely on the outcome of the *Jesse Short* case, which established the nature of the reservation as a single entity without preferential benefits to any particular group or tribe.

The court restated the findings of the Court of Claims on the *Jesse Short* case. The District Court, though, did note that the *Short* case didn't determine important issues concerning who has the right to decide how reservation income should be spent, who should manage the reservation resources, and who should administer social services.

So the decision limits the authority of the Hupa Business Council and states that funds must be used for the benefits of all Indians on the reservation in a non-discriminatory manner.

The Federal Government is also to maintain a supervisory authority over all spending, and to develop a plan to include non-Hupas in the use of reservation funds.

Pursuant to this decision, it is my understanding that a plan has been submitted, and the plaintiffs are currently discussing their concerns about this proposal. The defendants in the *Puzz* case requested a stay of the District Court order, and the court declined the stay.

The current situation on the Hoopa Valley Reservation represents the result of a tangled chronology of events beginning at the time of contact among the indigenous peoples and outsiders.

The failure of even so cogently argued and researched a case as Jesse Short versus the United States to bring about a resolution testifies to the difficulties of the issues.

I think that in further consideration we should look very carefully at the record, at the anthropological, the historical, and the legal documents that concern the reservations. These are noteworthy for their completeness and their unbiased attempt at interpretation.

I believe that the focus should primarily be on the Bureau of Indian Affairs' administrative interpretations and practices. I feel very strongly about that.

I think, also, that it is important to remember that the cultural affinity and familiarity and the interchange between peoples represented in recent litigation outweighs the acrimony generated during the course of these disputes. These are people who have survived attempted annihilation, forced acculturation, and hardships so common to Native American reservation life.

It can be fairly said that disharmony between peoples otherwise so closely tied would be detrimental to all concerned.

It is my belief, should the committee continue its hearings on these matters, that the extensive documentary record be balanced with an appreciation for the personal testimony of reservation members.

It has been my experience that personal interchange is a respected and powerful communication technique for Native American peoples. They should be given the opportunity to exercise their considerable skills of personal expression in the context of these hearings.

Thank you.

[Prepared statement of Dr. Theodoratus appears in appendix.]

The CHAIRMAN. I thank you very much, Professor. I can assure you that your presentation does much to clarify what is before us, and your suggestions will be taken to heart. Thank you very much.

We will now have a panel consisting of: Ms. Jacque Winter of Hoopa, California; Ms. Roanne Lyall of Ashland, Oregon; and Ms. Dorothy Haberman of Klamath, California.

Ladies, I welcome all of you. May I now call upon Ms. Jacque Winter?

STATEMENT OF JACQUE WINTER, HOOPA, CA

Ms. **Winter**. My name is Jacque Winter. I am three-eighths Yurok and one-eighth Tolowa. I was born on the Hoopa Valley Reservation.

For the past 14 years I have lived and taught on The Square at the only high school on the entire reservation. The school district draws students from 1,200 square miles. Fifty-nine percent of the students at the high school are Indian. Over 50 percent of these students are not members of the Hoopa Valley Tribe.

There are several issues I would like to address today. I would like to talk about culture, identity, and justice.

Culture has its beginnings in the roots and traditions which are passed from one generation to another, from elder to youth. Those elements which make up one's cultural background do not depend on where an individual lives, but rather on how an individual lives.

Momoday speaks of blood memories, which is what my mother, a full-blood Indian, passed on to me and to my children. For example, I find no fault in the spiritual leader of the Hoopa Valley Tribe living and working in Eureka, which is 120 miles away round-trip.

Several years ago, because he could not speak the language, when Merv George first took over as main dance leader, he had Ruel Leach, a Hupa Short plaintiff, say prayers for the White Deerskin Dance.

The reservation is composed of Indians of several tribes, but as Indians of the Hoopa Valley Reservation we participate together in our dances while retaining our individual tribal traditions.

If we can worship together, attend school together, have children together, I say that we can, in the same spirit, work together to create a unified self-governing, self-directing reservation which will benefit all.

Howard Dickstein wrote, in March, 1981, when he was counsel for the Hoopa Valley Tribe:

> Pointing to the Yuroks as the main enemy of the Hupa people seems, to us, destructive for a number of specific reasons. First, it does not take into account that most Hupa tribal members, themselves, have Yurok blood, and vice versa, so that the distinction which may have been valid at one time is now largely a myth.
>
> Moreover, it encourages self-destructive rivalries and serious identity problems between tribal members and families, and even within families, themselves.

He was fired two weeks later. You can see his entire letter in my attachment.

Chief Seattle said, "We are all a part of the web of life, and what affects one part of the web of life affects the whole." This is especially true of the Hoopa Valley Reservation, where the web of life is so intricately woven.

My son, a Short plaintiff, is married to a Hoopa Valley Tribe member. Her father, sister, and brother are all Hoopa Valley Tribe members; however, her mother, who is one-half Hupa and a Short plaintiff, is not.

My grandsons, who are one-fourth Hupa and one-fourth Yurok were rejected by the Hoopa Valley Tribe. Herman Sherman, their great-grandfather, is one of the few full-blood Hupas. He is the only one who knows all of the old dance songs and traditions, some of which are no longer performed. Only two of the Hoopa Valley Business Council members are predominantly of Hupa blood. In fact, Lyle Pole Marshall is one-sixteenth Hupa. Their blood is as mixed as ours. They have no more right to The Square than we do.

I have a one-quarter blood granddaughter whose father is a Hoopa Valley Tribe member and whose mother is a Short plaintiff. Like countless other Indian children, she needs to be acknowledged as an Indian of this Reservation. Legislation which would deny her an identity, which would deny her a tribe, a reservation, scares me.

We don't want to become Hupas. As LaDonna Harris said, "The blood runs the heart, and the heart knows what it is." We know whether we are Yurok, Hupa, or Karok.

You hear about Hupa aboriginal lands; however, you do not hear that 5.1 miles south of the northern border of The Square on Highway 96 existed an aboriginal Yurok village, or that the northeastern portion of The Square—known as Red Cap—is traditional Karok territory and the northwestern portion is Redwood Creek. This is why, in 1950, when 106 people decided to form a tribe by a vote of 63 to 33, several Yurok and Karok families were adopted into the tribe.

Perhaps the most difficult part of surviving in "one nation under God, indivisible" is constantly realizing that freedom is fragile, and justice is not only blind, but sometimes bigoted.

The BIA created the Hoopa Valley Business Council and said it owned The Square. Thirteen Federal judges declared that the Hoopa Valley Tribe has no legal or historical claim to ownership of The Square. The United States Government doesn't like to be found wrong. It has armed the Hoopa Valley Business Council with over $10 million to prolong—not win—the Short and Puzz litigations.

In addition, although Bob Tucillo of OMB has requested from the Justice Department an accounting of the federal defendants attorney and court costs accrued during the *Short* and *Puzz* litigations, he has yet to receive this information.

Based on the *Puzz* decision, we finally have a voice. We finally have a goal of self-determination. We have, in three weeks, gathered approximately 800 signatures requesting that the BIA conduct a referendum for a reservation-wide government.

The *Short* case forces the BIA to confront the reasoning for its policies at the most fundamental level—basic property law. The question is this: given that all Indians of the reservation communally owned the reservation before the 1950's, could the BIA alter their ownership interest by recognizing tribal groups which do not consist of all Indians of that reservation? I don't see how it can; however, it certainly has been biased, and it allowed the Hoopa Valley Business Council to discriminate—and I welcome any questions in this area.

However, I firmly believe that the BIA is the real culprit, for it allowed Indians to lose acre after acre of valuable land, both on The Square and The Extension. Over 50 percent of the valley floor is owned by non-Indians. The other half is owned or allotted to Hoopa Valley Tribe members or other Indians. Approximately 500 non-Hoopa Valley Tribe Indians live on The Square. I am one of them.

The United States Government violated its trust responsibility to all of the Indians of this reservation, and that is why all of the suits have been against the government. They never were intended to be against the Hoopa Valley Business Council. No where will you read "Yurok versus anyone."

We ask that the Congress uphold its statutory degree which established this reservation, that Congress uphold the judicial decisions made in favor of the plaintiffs during these many years. We ask that you give us one vote for each person with majority rule, a principle I assume is basic in the United States of America.

Thank you very much, Mr. Chairman, for the opportunity to speak at this hearing. I will attempt to answer any questions you may have regarding my oral testimony. [Applause.]

[Prepared statement of Ms. Winter appears in appendix:]

The CHAIRMAN. Our next witness is Ms. Roanne Lyall.

STATEMENT OF ROANNE LYALL, ASHLAND, OR

Ms. LYALL. Thank you.

My name is Roanne Lyall. I am a plaintiff in Short versus the United States; I have been qualified by the Claims Court as an Indian of the Reservation entitled to share in the income from the entire reservation. I am also a plaintiff in the civil rights action, Puzz versus the United States, which sought declaratory and injunctive relief from the arbitrary and discriminatory policies and actions of the Department of the Interior/Bureau of Indian Affairs—the agencies charged with carrying out the trust responsibility obligations of the United States to protect all Indians and their property.

The problems on the Hoopa Valley Reservation were created by the unauthorized and illegal course of dealings between the Department of the Interior and the Hoopa Valley Tribe, beginning in 1950. The Department of the Interior's pattern of administrative mismanagement of the reservation has led to the 25 years of litigation.

The argument is about the political and property rights of the Indians: rights of the Indians to share equally and indistinguishably in the use and benefits of our reservation; rights of the Indians to participate in the management of the land and resources of our reservation; rights derived from our status as Indians of our Reservation, not from membership in some artificial sovereign tribal organization as mandated by Federal officials. This is our problem.

The problem was not created by a clash of cultures. The problem is not Indian religion or ceremonies, nor is it about ethnic differences. It is about control of property and money.

The courts have not misconstrued nor misinterpreted the 1864 act of Congress which created the reservation, or the 1891 executive order which extended its boundaries. The simple fact is that Congress did not nor did it intend to grant any territorial rights to any specific tribes.

Instead of ratifying the treaties made with the California Indians in 1851, Congress chose to terminate the aboriginal property rights of the California Indians unless they filed a claim against the U.S. Government by 1853.

The reservation was created for the use and benefits of all tribes, bands, and groups of Northern California Indians who were living there, or who could be induced to live there. The qualified *Short* plaintiffs are the descendants of those Indians for whom the reservation was established. We have been judged by the same standards used to determine membership in the Hoopa Valley Tribe. We are all equal.

We, as well as the members of the Hoopa Valley Tribe, are made up of assorted tribes, bands, and groups which have intermarried, merged, and divided extensively over the history of our reservation—groups which have always simply, in fact, existed irrespective of Federal recognition or formal organization.

Our reservation is tribal in the sense that its lands and resources are communally, not individually, owned. The simple fact is that the claim of the Hoopa Valley Business Council to exclusive rights in The Square has no validity in ethnology, history, or law, and the decision of the Department of the Interior to bestow exclusive rights on that council was unauthorized and illegal.

The Hoopa Valley Reservation, Square, and Extension, is one unified reservation. No person or group has exclusive rights in The Square or any other part of it. Membership in the Hoopa Valley Tribe does not confer special rights or entitlements in reservation-wide resources or government beyond the rights shared by all Indians of the reservation.

The April 8 order in *Puzz* v. *United States* represents the successful culmination of a 25-year effort to rectify the unauthorized and illegal actions of the Department of the Interior.

Since the reservation does not have a tribal government representing all Indians of the reservation, the court ordered the BIA, on pain of contempt, to submit a plan to administer the reservation for the equal benefit of all Indians in a nondiscriminatory manner. It ordered a stop to the discrimination in the provision of funds, services, and the management of resources.

We believe the court has opened the door to Indian self-determination and reservation self-government for the first time in the history of our reservation. In defining the trust responsibility obligations of the Government to the Indians, the court has said the government has a duty to allow all Indians of a reservation to participate in self-government on a nondiscriminatory basis. We are acting on that statement.

Our petition requesting the BIA to conduct a referendum election to determine whether the Indians of the reservation want to establish a reservation-wide administrative body to manage the unallotted lands and resources, and to determine proper use of reservation funds is being worked on.

Ross Swimmer has indicated that he will not authorize the referendum. He says there is no law that says he has to. This is the attitude of our trustee, the protector of our property rights. This is our problem. This is why we have been in the courts for the past 25 years.

If the Federal agencies put as much effort into complying with the court decisions in *Short* and *Puzz* as they put into trying to subvert and thwart those decisions we wouldn't have a problem.

If and when they refuse to conduct a referendum we will be back in court. The court has said it can enforce the BIA's trust responsibilities to all Indians of the Hoopa Valley Indian Reservation. We say let it.

From 1864 to 1950, the Government ran the reservation. From 1950 to April 8, 1988, the BIA unlawfully allowed the Hoopa Valley Tribe to run the reservation. We do not want the BIA running the reservation again. We want a voice in our future and in the management of our lands and our resources. We want a vote. We want equal rights. We do not want to be stripped of our political and property rights through legislation enacted to divide the reservation.

In his statement in opposition to Congressman Bosco's legislation H.R. 4469, Professor Clinton sums it up better than I possibly could. He says:

> Apart from the unconstitutional aspects of the partition plan proposed, I oppose the nonconsensual partition proposal as bad policy. It is an arrogant, paternalistic, anti-democratic effort to subvert the legal processes by which Indian rights are enforced through the courts.
>
> Passage of such high-handed legislation would place the stability of all Indian rights—indeed, perhaps all property rights—in jeopardy. The involuntary, nonconsensual partition plan certainly represents a threat to the concept of the rule of law in the field of Indian affairs, and possibly to the legal processes by which all property is protected.

Thank you very much, Mr. Chairman, for the opportunity to come before you today in this hearing to present this testimony on the problems we are currently facing on the Hoopa Valley Reservation. [Applause.]

[Prepared statement of Ms. Lyall appears in appendix.]

The **Chairman**. Thank you very much, Ms. Lyall.

The final witness of the second panel is Ms. Dorothy Haberman. Ms. Haberman.

STATEMENT OF DOROTHY HABERMAN, KLAMATH, CA

Ms. **Haberman**. My name is Dorothy Williams Haberman. I am a Klamath River Yurok Indian. I am an acknowledged leader of over 3,000 Indians of the reservation. I am one of the original plaintiffs in Short versus United States, and I am qualified to receive damages in that case.

I am living at my family's fishing resort (Dad's camp) at the mouth of the Klamath River on the reservation. I manage this resort. My grandfather started this resort in 1914. This land is our family's reservation allotment. The land belonged to our family under Indian law long before non-Indians occupied California.

The only time it has been out of my family's hands is when the Government tried to take it for Redwood National Park in the late 1960's. The BIA did nothing to help us. We had to get help from the Sierra Club and Save the Redwood League to get the Interior Department to deed it back to us.

All Indians of the reservation, whether they live on The Square or The Extension, come to fish at our place, including great numbers of the Hoopa Valley Tribe.

I am related to at least 600 people who belong to the reservation, including large families within the Hoopa Valley Tribe. This includes people who have served on the Hoopa Valley Business Council.

My first job as a young lady was with Mr. O.M. Boggeas, reservation superintendent in the 1930's. At that time all our names were listed on Hoopa Valley Reservation census rolls in alphabetical order. Our tribal heritage did not matter for these rolls, and the BIA used them to indicate who had reservation rights.

In 1950 the allottees on The Square and their descendants organized the Hoopa Valley Tribe. Within five years the BIA had stripped me and the other two-thirds of the reservation's Indians of our property and political rights by giving power over The Square to the Hoopa Valley Tribe. This is the source of our problem today. Most of us were unaware that the BIA had turned over The Square to the Hoopa Valley Tribe until 1955, which is when the first per capita checks were paid out to the members of the Hoopa Valley Tribe.

We asked Leonard Hill, then area director for the BIA, why did the majority not share. He replied:

> We have limited our scope of jurisdiction back to the 12-mile square, and you no longer have any rights there. You are in the same category as a lost band of Indians.

He said the BIA would continue this policy unless it was overturned in a court of law.

We won the *Jesse Short* case in 1973. The BIA and the Justice Department continue to fail to implement our victory. That is why we are still fighting the BIA.

For instance, on January 13, 1976, the Court of Claims ordered the government to account for all "income and outgo" of the reservation funds. That order has never been carried out.

We need to know how reservation resource revenues have been spent. The BIA must tell us, as the court has ordered it to do. This committee should strongly influence the BIA to comply with the court's 1976 order to account for these funds.

The BIA and Justice Department say we won only a monetary judgment in *Short.* They claimed we did not win a voice nor a vote in reservation government, even though the court held we owned the reservation just as much as the Hoopa Valley Tribe's members own it.

In our frustration, my sister and five of the members of the Puzz family filed a civil rights case in 1980—the *Puzz* case—to win a voice and a vote in management of reservation resources. We won the *Puzz* case on April 8, 1988. As a result, we are preparing to ask the BIA to hold a referendum on starting a council to govern the whole reservation.

People wonder why we have not formed a separate organization from the Hoopa Valley Tribe over the years. There are several answers to this. First, we believe the BIA would use a separate organization to strip us of our fair share of communal property rights in the reservation. It would do this by trying to split the reservation 50–50, or some other way, between the separate groups, even though the Hoopa Valley Tribe is a minority.

If you doubt our fears about the BIA's intentions, look at H.R. 4469. It would give the Hoopa Valley Tribe over 90 percent of the communal property and leave us with less than 10 percent. The BIA has asked for amendments to H.R. 4469, but it does not oppose the split, itself. It is always trying to give us the lesser portion and the Hoopa Valley Tribes the greater.

Another reason for not organizing a separate group has been that the Hoopa Valley Tribe's supposed authority over the reservation came from the BIA and not from any independent source such as ownership of communal or reservation resources.

The BIA could withdraw its preferential treatment of the Hoopa Valley Tribe the same as it bestowed it. Therefore, in reality, the Hoopa Valley Business Council is powerless. The *Puzz* case only confirms this. We have refused to fall into the BIA's trap. We are demanding the right kind of organization—one which flows from our ownership of the reservation and not from what the BIA says we can or cannot have.

With the right organization we will be in a position to demand fairness from the BIA and the rest of the government. The Hoopa Valley Business Council is not in such a position.

A third reason for not organizing separate tribes is that our dispute is not tribal, contrary to what the BIA says. Not all Hoopa Valley Tribe members are Hupa. Many are Yurok, including my relatives. Likewise, there are Hoopa Indians who are *Short* plaintiffs. A so-called Yurok tribe is not the answer, because no one can force a tribe to take in people who don't belong to it in the first place.

If people on this reservation started organizing according to their true tribal heritage, there would be more than two tribes, and some people would not fit in any of them. This would be ridiculous on a reservation the size of ours. So many of us are related to each other. Our reservation government should reflect our unity, not our divisions.

Finally, we have refused to form an organization before we got a court decision in the *Puzz* case. This has prevented the BIA from dictating some kind of an organization for us other than the one we want. The *Puzz* case gave us our civil rights back for the first time in over 38 years. I can't begin to tell you how pleased the majority of us were at this great news, particularly when I recall the words of Leonard Hill back in 1955.

The BIA has enticed a small minority to try to organize separate tribes. It has promised them jobs and money, and has confused them about our court decision.

On the heels of the 1973 judgment in *Short*, the BIA stepped up its efforts to force us to organize. It attempted to work with congressmen towards this end. It even tried to substitute a Yurok tribe as a plaintiff in *Short* instead of us individual plaintiffs, disregarding the fact that no such tribe existed to carry on the case.

It got so bad that in 1979 we had to file the *Beaver* case in Federal district court to stop the BIA from organizing us unless we voted to organize. The BIA held an election in 1980. We voted 1,905 to 65 against organization, and that is part of my attachments here. This vote did not stop the BIA from trying to get us to organize.

In 1984 the BIA promised technical assistance to a small pro-organization faction. This faction began to hold meetings, usually attended by fewer than 30 people. In 1985 the Health and Human Services Department's Administration for Native Americans, ANA, awarded this group $50,000 to draft a constitution.

It is apparent that the BIA encouraged ANA to do this. This disturbed even Congressman Bosco since it was a violation of the spirit, if not the letter, of the *Beaver* case. At that time, Congressman Bosco had not sided with the Hoopa Valley Tribe as he does now.

The BIA area office issued the "general council concept." This "concept" is that a small group of people can call a meeting, and if we do not attend and vote, the small group can organize a tribe right under our noses, whether we like it or not.

Such a meeting took place 1 month ago on the reservation. Many people were too dismayed or disgusted to attend, but others of us did attend. Once more, we voted down a separate tribal organization, but I doubt that this will stop those who want a divided reservation from working with the BIA to achieve their illegal goal.

As I said, our reservation doesn't need separate tribes. What it needs is for the BIA to treat the Indians of the reservation equally as the law requires.

My aunt and other close relatives live on the upper extension at Notchko, where there is no electric utility or telephone service, the roads are bad, law enforcement is practically non-existent, and the water doesn't meet public health standards. Why can't the BIA try to fix some of these problems with our timber revenues and the other money it has? Also, the dump sites are bad. Garbage is flowing into the Klamath River.

Why does The Square have to be the focus for all efforts of economic development? We need that economic development in The Extension, also. The BIA should be made to answer these questions without any more legal mumbo-jumbo.

As for the part of The Extension where I live, it is mostly in non-Indian hands. I blame the BIA for this. After all, the BIA did nothing to prevent our land from becoming a national park. Many people lost their allotments against their wishes, due to BIA policies. People who grew up on The Extension have had to leave to find work. The Indian commercial fishermen have had to use a non-Indian's dock to unload their catch, why can't the BIA help acquire more of a land base on this reservation?

In the past ten years there have been years when reservation timber produced several million dollars of revenue.

It seems to me that a lion's share of this has been spent to hurt rather than to help us. It has gone for lobbying to support proposals like H.R. 4469, for attorneys to fight to the tune of between $10 million and $11 million, the *Short* and *Puzz* cases, and for a lot of other schemes which benefit only a few people if, indeed, they benefit anyone at all.

There are more than one billion board feet of reservation timber. We have some of the best salmon in the world. The beauty of our reservation is beyond question. But the BIA is not responsive to our desire for development of our resources. It only seems bent on getting us to squander our political and property rights. Why this is so escapes me, but this committee should look into it.

The BIA preaches self-determination, but it has practiced something else entirely. We have practiced self-determination on our reservation despite everything the BIA has done to thwart us. We shall continue to govern ourselves and not be dictated to.

I hope that this hearing will begin to make this clear to you, and that you will help us in our effort to make the BIA practice what it preaches.

Thank you.

[Applause.]

The CHAIRMAN. I thank you very much.

Ladies, I thank all of you for your assistance this morning. I can assure you that your statements will be carefully considered by members of the committee and the staff. We are most grateful to you.

Our third panel consists of the following: Ms. Lavina Mattz Bowers of Trinidad, California; Mr Peter Nix, Hoopa, California; Mr. Walter Lara, Sr., of Trinidad, California.

Before calling upon this panel, I would like to assure all witnesses that their full statements, though not presented, will be made part of the record. So if you want to summarize your statement that is up to you, but your full text will be made part of the record. I can assure you of that.

Our first witness is Ms. Bowers.

STATEMENT OF LAVINA MATTZ BOWERS, TRINIDAD, CA

Ms. BOWERS. Good morning ladies and gentleman.

My name is Lavina Mattz Bowers. I am from the lower part of the Klamath River. I live at the mouth of the Pacific Ocean. I have lived there for—well, my family has lived there for many, many years, since the time our Indian people began.

We have, on our land, the only traditional Indian house standing on The Extension. My grandmother and my great-grandmother were raised there. I have seen a picture of the Indian house that stands there from the late 1800's. It still stands there.

We have been traditional fishing people our whole lives. My grandfather and my great-grandfather fought for Indian fishing rights on our river. My brother went back into the Supreme Court and won fishing rights for our people on the Klamath River—that's Raymond Mattz.

Our people have always been traditional people. My mother died 1½ years ago. We have known for years and years and years what part of that place was ours. We had our home there that we believe is truly something that is so special to our people and to my family because it is ours.

I went to the Hopi Reservation last summer and I was talking with them. They were telling me that their place was the place where it started there. And I said when I was a small child my mother told me that when the Great Creator left Klamath—her grandmother told her—he stood at the mouth of the river and pointed and said, "I'm leaving my people now, I'm leaving the fish, the acorns, the land. I'm leaving this here for you. You'll be provided for for all time," and he left. He walked over the top of the hill. We've known this story for years and years and years.

When my mother passed away I went down and I talked to Florence Shaughnessey about it, and she said, "Oh yes. Your mother was right." And she said, "This is the song the creator sang as he went over the hill," and she sang a song to us. That was beautiful.

We lost Florence Shaughnessey last week, so that's another one of our elder people that knows we belong.

I talked to Minnie McCumber about it, and she said, "You know, I haven't heard that story"—she's an older lady, also—"I haven't heard that story in so many years, but yes, that's right. When he left he walked up over there and said I'm leaving." We have a rock that stands down there, and he said, "I'm leaving this lady to protect our people. And you always remember if you pray to the Great Creator your life will be full, and you will always have what you were intended to have."

My people have always, always believed in this. We have been put down by different people on the reservation. They have said things about our family and about our fighting for our fishing rights, and we have listened to this for a long time. This is why I said today that I'm going and I want to talk. We have never come out and talked. My daughter has talked and did things, and she has been put down real bad.

We have never been Hupa Indians. We have never wanted to be Hupa Indians because our land is there on the mouth of the Klamath River.

My mother truly believes some of the Hupa Indians—about seven of them that sit on the council—were related to my mother. That was back in the old times. That didn't mean that I am giving up my rights as a Requa Indian or my property to be a Hupa Indian, because I never wanted to be one. I will never be one.

Also, my grandfather and my great-grandfather had timber on the Klamath River. We sold our timber. They took that, themselves. It went over the mile on each side of that river. Right at the mouth of the river he had 40 acres on the top. The miles goes up here, and his land went on up over that hill. So we had rights other than just right there where that mile was on each side of that river.

I think that's about all I can say.

I thank you.

And I would like to have each and every one of you come and see my Indian house on the Klamath River.

Thank you for the opportunity to speak to you this morning. [Applause.]

The **Chairman**. Thank you very much.

Now may I call upon Mr. Peter Nix.

STATEMENT OF PETER NIX, HOOPA, CA

Mr. **Nix**. My name is Peter Nix. I am a Pohlik-lah Yurok Indian of the Hoopa Valley Indian Reservation. I am also a Jesse Short plaintiff.

I prepared a statement, but rather than read from the statement, I think that what I have heard here today kind of put me in a place that I really don't know what is happening. What I do know is what is happening to us that live on the reservation.

I have heard people talk that are well educated, and I have made a determination that in order to be an Indian leader along the Klamath River you have to have money. The people that have spoken for us in the past are wealth Indians. They are the ones that Ronald Reagan spoke of in Moscow. I am one that he didn't know of. [Laughter and applause.]

But I think there are a lot of Indians like myself that either had to borrow money or had to find some way to get here today just the short distance that we have had to come. Since you have come from Washington, DC, ours is just a walk across the street.

But I, myself, must make several statements on behalf of people that I represent. I represent people that elected me through a vote on the Klamath River to speak on their behalf.

I also have to make a statement that some of the people that I have heard so far this morning don't exactly live where they say they live. They have, all my life, lived off of the reservation, and I have never known them to live on the reservation as they have said in their testimony this morning.

Another statement that I have to make is, yes, we do want and we will continue to fight for a Pohlik-lah/Yurok Tribe on the Hoopa Valley Reservation.

If we go back over and start from any written materials that have evolved from the government contact with our people, our finger can only point in one direction, and that is at the U.S. Government. We have never—in my lifetime or in my mother's lifetime or in her mother's lifetime—that I know of, in speaking to these three generations, ever held the purse strings of the U.S. Government. We have never been in the position to make policies or rules by which our people would live according to the Federal Government's thinking of how an Indian should be.

I do not support Mr. Bosco's bill of H.R. whatever it is—4469—but I would support it if it gave a future to our people. I agree with some of the testimony that 90 percent of this bill would go in favor of the Hupa Tribe, and if I was a Hoopa Tribal member I would fight every step of the way. I'm not encouraging them to physically fight, but to fight their battle, as they have fought to control what is their homeland.

But in defining a homeland, our homeland goes six miles into the Hoopa Square on its northern border. The last speaking Yurok village was at the northern end of the canyon in what we describe as the bluff area.

If you divide us, I can see only worsening the problem that you have already created. I say "you" have created this problem—I don't know which of you work for the Federal Government or which of you don't. I only know that Senator Inouye was elected to serve his people from the State of Hawaii, and I appeal to you, as the Chairman of this Committee, to see if a bill could be drafted to protect the rights of the tribes and their members of that reservation. How you deal with the Indians of the reservation is not my problem. Our problem is how to deal with the immediate needs and the problems of our Pohlik-lah/Yurok people.

If you turn over the controls, as *Puzz* wants you to do in their litigation, which I am not a part of—I have stressed this over and over. I have only seen six people as plaintiffs in that, five of which are living, and I have heard other people say that they are plaintiffs in that case. I don't know how we became plaintiffs in a case that we knew nothing about.

We virtually know nothing about the *Short* case because, again, we did not have the money to tag along with the people that self-appointed themselves to represent us. I heard one person say this morning that they represent over 3,000 *Jesse Short* plaintiffs. I hope that I am not one of those people, because I withdrew my power of attorney from the three people that originally represented us because I can no longer support people running around degrading us and trying to keep us from our birthright and identify.

We are identified as Indian people of that reservation. No. I'm not just an Indian of that reservation. I am a Pohlik-lah/Yurok of that reservation. Pohlik-lah is a word that was used by my ancestors long before any white man ever set his foot on this continent.

After he came in 1934 with Mr. Bogas I became a Yurok or a Klamath. My mother and father are both Klamaths. I'm a Yurok. My grandmother, when I asked her what Yurok meant, said, "I don't know. I'm Pohlik-lah, your mother and father are Klamath, and you're a Yurok, and we're all *Jesse Short* plaintiffs." [Laughter.]

So we have a real bad identity problem, and we are not being allowed to exercise our rights as Indians, and that is the sovereign rights that are bestowed upon tribes that are recognized by the United States of America, and we are most certainly in the Federal Register as a recognized Yurok tribe of the Hoopa Valley Indian Reservation.

Hupa can have its square, as far as I am concerned, because we, as Indians along that river, need to work on a one-on-one basis with the U.S. Government to face the problems that we have there. And I would hope that this committee, if you are going to do anything that is justified toward the Indian people along that river, is that you will allow us, as Indian people, to sit down and start somewhere.

We can start with blank pieces of paper and see the things that we agree on, and we can write on another piece of paper the things that we don't agree on, and we can compromise those things.

The court decisions that have been made are court decisions only. You have the right, as Congress, to change those decisions, I hope. Because if you don't, I don't want to be an "Indian of the reservation". I don't know how we would set enrollment standards for that, and for those people that want to do that I think that they should be allowed to do that. Myself, I am Pohlik-lah, I am a Yurok in your definition, and I think that I should be allowed to remain that in my own place, as Mrs. Bowers Alameda says that we have our identity, and we do have the right to exercise our sovereign rights and to elect a body to represent us.

A little bit ago a lady said that there was a vote as late as last month as to organization or not. Okay, there were only 32 votes that separated us from organizing. Why we voted to organize or allow people to vote to organize I don't know. We already know who we are. Our problem is seating a council that can represent and start and be the catalyst that will grow into the Yurok or the Pohlik-lah Nation.

Thank you. [Applause.]

The CHAIRMAN. I thank you very much, Mr. Nix.

Our next witness is Mr. Walter Lara, Sr. Please proceed, sir.

STATEMENT OF WALTER LARA, SR., TRINIDAD, CA

Mr. LARA. I prepared a statement that I submitted to you. In the statement there are a lot of points that I put in under the letter that I received from you stating that this wasn't involving H.R. 4469.

The CHAIRMAN. Because we do not have the bill before us.

Mr. LARA. Right.

The CHAIRMAN. It is still in the House.

Mr. LARA. We've received testimony all the way so far on that, and the testimony I have submitted to you is between 20 to 28 years before this in existence, so I'll have to add some to it that I don't have on there that involves this H.R. 4469 from my own way of thinking about it, if you will set that in the record as well as mine.

The CHAIRMAN. The record will be kept open for three weeks for anyone here to submit a statement.

Mr. LARA. Thank you.

The CHAIRMAN. If you want to amend your statements, you may do that also.

Mr. LARA. We'll do that, and we'll add to it. Okay.

This is regarding the Hoopa Valley Indian Reservation.

My name is Walt Lara, Sr. I am a Yurok Indian, and I serve as one of the traditional ceremony leaders of the Yurok people.

I own a lot of lands, as well as private lands within the extension of the Hoopa Valley Reservation. I am here today. What I have to say I hope you will hear and take the time to listen so that the record will be set straight.

I am a Yurok and a member of the Yurok Tribe. Because of the past congressional actions and the court decisions such as *Jesse Short* v. *United States* and the *Puzz* v. *United States et al.* I have been told I am not a Yurok, and the Yurok Tribe does not exist, but that I am an individual Indian of the reservation.

Now, with me being in the position that I am in, and as a Yurok in the traditional structure, is that it is the Yurok people that I represent in that position.

Now, again, see, I heard a lady talk about the religion and the freedom of religion, and we respect the freedom of people's religion and how they feel and where they like to participate. But we're Yurok people with the Yurok culture and the Yurok religion. If we go to another tribe to participate, as we are supposed to, we go there as visitors.

Now, in the past testimonies of traditional leaders from other tribes I have heard that we, as Yurok people, intend to move into that. Now, I had never heard anything like that in the traditional structure of our people. What I heard in testimony today by a lady here that I have not discussed with or talked with about that, and in our religion and in our beliefs we are separate, and I intend, as long as I have anything to say about it, to keep it that way.

When we participate with the neighboring tribes we participate as visitors, and I intend to try and keep it that way, and that's how I see that. [Applause.]

Mr. **Lara**. Because the Yurok tribe is, therefore, unrepresented. It does not receive services such as those provided by economic development assistance, health, education, and welfare. We do not receive monies in the areas of businesses or jobs. We do not receive Federal assistance or job training. We are not allowed monies from revenue sharers or monies for operating funds. We do not receive housing assistance, land assignments, and we are excluded from job preferences to work on The Extension of the Hoopa Valley Indian Reservation.

These are the problems of the Hoopa Valley Indian Reservation for the past 28 to 30 years. As example, when we try to buy a campground and boat dock facilities, or participate in the surplus property sharing programs, the Bureau of Indian Affairs has refused to assist us because we are not an organized tribe.

When we tried to improve the living conditions of the Yurok people, the Bureau of Indian Affairs told us they are not in the housing and renting business. They said that by our own laws, since we are not organized our children are not entitled to educational benefits or programs unless they are one-half Indian or more. This is critical, because we have come a long way in providing education to our children, and they are forced to face a new transition into a world of computers. You cannot even get a job in a grocery store if you can't understand computers.

Now, when in your opening statement you said that the Indian Committee now has the best computers to function with, and here we are cutting our children off on education just because we're not organized or they are not half Indian or better.

The problem at the reservation is also the problem of the State of California and the United States now with new laws that have just been created stating that we can't have services if we are not organized, and if we are not organized we have to be half Indian or better. So it is not just a problem of our reservation; it is a problem of other Indians of other reservations that aren't organized to that fact.

How are we supposed to prepare our children for this transaction if we can't receive educational assistance? Let me make something clear here. We are not asking for handouts. We are asking for an entitlement which was promised to us when our ancestors allowed the United States to occupy our traditional homeland.

You, as members of the governing body of this country, have the responsibility to fulfill those promises, so I do not like to hear anything about handouts, or that because we are unorganized or a half-degree Indian that we are not entitled to services.

We have tried to organize, but the *Jesse Short* case and the *Beaver* case have prevented the Bureau of Indian Affairs from assisting Yurok Indians in our attempts to organize. The *Puzz* case tells us that we are not a tribe of Yurok, but just individual Indians of the reservation. We did not sanction the *Puzz* case or the *Beaver* case, either by referendum or by powers of attorney, and they have no proof that they represent us, as implied by "et al."

It is about time that the minority Indian Yurok Tribe of the reservation have something to say about their destiny. We have been fairly recognized as a tribe in which to exercise those rights of a tribe, which include a government-to-government relationship between the Yurok Tribe and the United States Government.

Now we are a federally-recognized people, and the Federal Register states that we have a sovereignty the same as the Hupa Tribe has a sovereignty on the same reservation—the Hoopa Valley Indian Reservation. Our sovereignty is Bluff Creek to the mouth of the Klamath River, one mile on each side. That's the way it had been for our ancestors, and that's the way we see it today. [Applause.]

We want leaders of the tribe selected by a democratic process, and not with an individual Indian.

In our last election to vote to organize, 44 percent were for and 56 percent were against. We've given everyone the opportunity to participate in an election in accordance with the Bureau of Indian Affairs 25 CFR Rules and Regulations General Counsel Concept.

To answer the question why we couldn't propose to organize was that the advertisement, when we did take the vote to organize, wasn't in that 14-day period that the Bureau of Indian Affairs said that we had to have taken in their general concept.

The general concept says that we give all people who have proof that they are descendants of Yurok people from the reservation an equal opportunity to participate. We did this so that there would not be any mistakes and so that we would be an organized tribe. In the end we had people voting who were already members of an organized tribe and had already had the services of the Secretary—the services mentioned previously.

The 56 percent voted against organization. These people think they will lose certain rights, such as their Jesse Short money, fishing rights, or the rights of commercial fishing, if the Yuroks are allowed to organize. So as Yurok Indians we lose again.

All we want are the same opportunities that other tribes who are organized have. We want this for our children and for our grandchildren—an equal chance.

We have accomplished many things over the years without these advantages, and have proven that we are willing to work at providing. We face the challenge of the future, and that is that we be allowed necessary tools and wages to meet with the many issues confronting us.

This month we sent two delegates of the 44 percent of our people who want to organize to Washington, DC, to testify on the Bosco bill, which will split the reservation. Our delegates were not allowed to speak because the Puzz attorneys and the Jesse Short people took up all the time. So, again, the minority was not allowed an opportunity to present our views on this matter.

Speaking as a tribal member, I do not want the reservation to be split. I would like to regain the original boundaries and lands of the reservation and keep the rights that we already have. I would like to see two business councils—the Hupa and the Yurok—established, and one general council made up of both tribes to manage our natural resources.

The management of the natural resources is that in the event that we do have an overall council for the natural resources, the Bureau of Indian Affairs still manages the natural resources, but those Indian people could then agree upon what of those programs, whether it be timber or the fish, that each one of these tribes would manage and control themselves. So there is an opportunity there that these things could be worked out.

We have been going for 28 years in a lawsuit and there has never been any one time that either tribe has sat down and tried to negotiate or resolve between these tribes, and I know it could be done, because I know people can negotiate and resolve their problems. And I think that if we were an organized tribe that this could have been done a long time ago in such a manner that we could participate and resolve the *Jesse Short* case and contract our resource management, law enforcement, social services, housing, education, et cetera.

In the event that the reservation is split, we would like to participate in this process as an organized tribe instead of attorneys or individuals representing us such as in the *Puzz* case where only six people are represented.

We do not want to be dictated to by these individuals that say that we are not Yuroks, but just individuals of the reservation. We want it to be entered and recognized that we are Yurok Indians and descendants of those Yuroks who lived here before us, and that if the reservation is split we want to be recognized as the Yurok Reservation.

Those other Indians that wish to remain individual Indians of the reservation, let them establish a new reservation and let it be known as the "Other Reservation," and let those names be known as those natives from the "Other Tribe." [Laughter.]

As a traditional tribe observer or leader of the Yurok Tribe, I have hosted and instructed traditional and ceremonial dances on the Yurok tribal lands for years. I have participated in the Brush Dance for viewing our children, the White Deerskin Dance for uniting our people, the Jump Dance ceremony for the health and the welfare of the lives of our people.

It is required that the ceremonial leaders take part in these dances on the Hoopa Reservation with the Hupa tribal ceremony leaders participating with the Karuk ceremonial dances further up the Klamath River on that reservation.

Long before anthropologists and archaeologists arrived and wrote of our tribe and put down in the many volumes in attached references—see Exhibit A—we knew who we were and spoke an Indian language that had a very distinct dialect, as shown in Exhibit B, which has never been recorded, probably because it would add to the already confused minds of the writers of Exhibit A.

The problems might seem mind-boggling, but the solution may be simple. Just listen to the truth.

Thank you for your time, sir. [Applause.]

The CHAIRMAN. I am well aware that there are many, many others who would like to testify this morning, but we do not have enough time. I will ask you to submit statements if you wish to. If you wish to discuss this matter with Mr. Parker he will be in this area to discuss these matters with you, and he will speak with you.

Unfortunately, we cannot continue the hearings this afternoon because we will be discussing another matter in this room.

Our final panel consists of the following: The Honorable Willies Colgrove, Chairman of the Hoopa Valley Business Council; the Honorable Dale Risling, Tribal Council Member; and the Honorable Mervin George, Tribal Council Member.

Chairman Colgrove.

STATEMENT OF HON. WILLIE COLEGROVE, CHAIRMAN, HOOPA VALLEY BUSINESS COUNCIL, HOOPA, CA

Mr. Colegrove. Good morning, Mr. Chairman.

With me today is Mr. Mervin George, is our recognized spiritual leader and the keeper of our religious ceremonial dances, and he is very active in maintaining our religious customs.

Also here today is Mr. Dale Risling. Mr. Dale Risling is a councilman from the Hupa Tribe. He has been involved in many activities for the major portion of his life.

I would like to, first of all, express our appreciation for you coming to California and holding this hearing today. This is very historical in the sense that it is not very often that California people get to express their views regarding the issues that are very, very important to them, so thank you very much.

What we have here today is an issue, I guess, that becomes very emotional.

I have submitted a written testimony for the record, and, with your permission, we will just basically condense our testimony.

I guess the problem we're talking about goes back a long time ago, and we all seem to think that our history starts when the United States started the State of California, but it didn't. And today I think you'll find, as many people testified earlier and will be testifying later today, that we have long links to our homelands.

What we heard—I have to respectively disagree with the anthropologist earlier today who testified and said that even though we had organization it still wasn't a tribe. I think that's basic to our whole structure. I think that's—well, really that's not the major point that we are here for today.

I think we are here today to look at a problem that has started back in the early 1950's.

When the Hupa Tribe started many, many years ago—over 100 years ago the Hupas were the only people living in the reservation. As we had trouble with the settlers and the soldiers and miners they had a problem regarding the tribe, itself, and part of our tribe went to the mountains and conducted their own warfare.

In doing that, what they wanted to do was to move the Hupas to another reservation in parts out by Catalina Islands. So instead of doing they left and started to fight.

Well, in doing that, at the same time the Klamath River Reservation, which was established in 1855, was basically covered with hugh stands of redwood, which was very, very wanted by the timber industry, and so they, in turn, after this 1864 act came about establishing the four reservations in California, said they would like to have this land.

So there were political pressures and all kinds of pressures given to the United States to try to take that land away from us, and they have used the 1864 act saying that there are only four reservations in California so this is no longer a reservation and they can take it.

The Klamath River ran through there and some of the largest Salmon and Chinook fish in the world.

In trying to get this land and trying to protect the Indians they established a reservation in 1891.

This technicality, then, becomes the issue of what we are talking about here today. The *Jesse Short* case has basically developed a life of its own as an institution. Many of us have grown up inside of it.

The court case was viable in 1963, but it goes back several years beyond that when they first originally signed and filed a declaration of ownership. And so this actually goes back over 30 years now, and many of us are younger than that.

So what we have, then, is now a case involving eight law firms that are now in the process of working on a settlement for claims case. The only way that they can win is to destroy the Hupa Tribe.

So this puts us in a position that we have to fight religiously to preserve ourselves.

We heard today much testimony regarding distribution of wealth and much of the land was allotted, but the Hupa wasn't allotted very much—about five percent was allotted to Hupa.

The Extension, as part of the process to get the land, they provided large allotments. Much of this was sold. As a matter of fact, it is still being sold. Last year there was a tract sold down there in Redwood that sold for over $2 million.

So the distribution of the land and the original aspect basically wasn't as it seems to be coming across.

The court now has got this in such a consideration now that we have the *Puzz* case, which is basically an order that there is no government up there.

Second, they say that the 1864 act had established reservations and basically did not give vested ownership to the Hupas, so logically they didn't give vested ownership to Yuroks either. But it also didn't give vested ownership to the other tribes that were established in the 1864 act.

So that is why we are looking at a problem that was created by Congress in the original act and other acts. In 1891 the Executive Branch gave an order that set up another reservation to help preserve the peoples, and that was all well and good.

In 1973 a decision came down, and in 1976 the judge ordered the parties to get together. We tried to get together. No one would come to the table. We won the decision, and you lost your Washington negotiating.

In 1978 the judge said to go to the table. They brought out Federal mediators in 1977. The Federal mediators were so upset with the process that they said we should settle it and just quit and go on and let the courts handle it.

In 1985 the court began to go to the table and sit down. The same words that you said today, they have a court imposed settlement in either side they like it.

Each time it went to the table, but with no organized group to talk to, and the major participants in the lawsuit refused to sit down with us, and went on with it.

I think this is exemplified when the judge said, "When you go to the table think tribally. That's your destiny tribally."

One of the people involved—and this is a part of the record—said:

> Well, Your Honor, we don't care what you call us. But the main thing you have to understand, Your Honor, is that we are more interested in little green pieces of paper with pictures of dead presidents on them.

And I think therein lies the problem of trying to get to the negotiating table.

We need to get a forum like we have today so that we can present stuff on the table in a logical, believable manner. And, therefore, we are asking you to submit legislation that helps us.

Thank you again, Mr. Chairman, for holding this hearing today and allowing me the opportunity to speak to you on this very important problem. [Applause.]

[Prepared statement of Mr. Colegrove appears in appendix.]

The CHAIRMAN. Mr. Risling.

STATEMENT OF DALE RISLING, TRIBAL COUNCIL MEMBER

Mr. RISLING. Thank you.

My name is Dale Risling, and I am a member of the Hupa Tribal Council, and I would like to thank you for this opportunity to speak to you here today.

You have a copy of my written testimony, so I will summarize what I have submitted.

I would like to state that the comments that I am making today are not aimed at the people from the Yurok Tribe that sincerely believe in tribal government who spoke earlier, but they are aimed at this group of people who consider themselves Indians of the reservation—a new term that has been recently coined by the courts.

I am here, like Chairman Colgrove, today because I am elected democratically by the Hupa people. We are accountable.

I am here supporting legislation because our people have directed us so through public hearings, through referendums, and through meetings, and this is the way the Hupa people speak, and this is the way tribal government speaks throughout the country. We are accountable.

The original *Short* decision—which was never reviewed by the U.S. Supreme Court—was handed down in 1973. On April 8 of this year a Federal District Court judge in San Francisco made a new and devastating ruling in a different case called Puzz versus the United States. This ruling takes away our tribal sovereignty and orders the BIA to take over government on our reservation.

Under the new BIA government, tribal involvement will be by contract with the BIA only. The tribes will have to lease its own land back at fair market value for economic development, and a six-member body will advise the BIA. This body would be made up of Yurok people and Hupa representatives.

We cannot participate in this type of a plan because our constitution does not allow for it. We would be violating our constitution by delegating authority to another body; therefore, we cannot participate in the *Puzz* compliance plan.

We have discussed these litigation issues with tribal leaders across the country and Indian organizations, and we have support from national organizations and leaders backing us and supporting us in this fight against tribal government in these anti-Indian lawsuits—the *Puzz* and the *Short* cases.

Because the *Puzz* ruling terminates the Hupa Tribe's territorial sovereignty, we are powerless to cope with the complexities of modern life. The survival of the Hupa Tribe depends on its ability to protect natural resources, and yet our tribal court system has no jurisdiction to support tribal ordinances to protect resources, to zone commercial development, or regulate trespass or theft of tribal timber and other resources.

The Government—the BIA—cannot simply step into the shoes of a tribal government. It has no authority to expend tribal moneys to run its operation. The BIA compliance plan in *Puzz* clearly will run aground on Federal statutes that forbid the use of tribal funds for BIA expenses. For this reason alone, the crisis on our reservation cannot be resolved without congressional action.

Let me give you some examples of the serious problems *Puzz* has already caused.

The reservation hospital, which serves everyone in the area, was closed down on June 15 of this year.

The tribe's Hupa Forest Industries can no longer successfully participate in reservation timber harvest or provide jobs for up to 170 reservation residents, including many plaintiffs.

The tribe cannot proceed with a $1 million motel project. It would provide 57 construction jobs and 7 full-time motel services jobs.

But yet the BIA is developing a Yurok commercial fishing operation on the reservation for this year, and it is exempting it from the *Puzz* compliance order.

Blaming *Puzz*, the BIA has reached a settlement agreement in another case, the Hoopa Valley Tribe versus Christy. Under the settlement, the BIA agreed to transfer property and buildings to the tribe. It also agreed to sign self-determination contracts for the tribe to perform reservation road maintenance, timber, and realty functions.

Loss of property and the buildings jeopardizes two important social services grants because the tribe intended to use these buildings for those grant programs. The loss of a 638 contract will mean the loss of 70 jobs, which we cannot afford.

The Hupa Business Council is the only full-service local governmental organization on the reservation. It has been the major government service provider in the extremely isolated eastern half of Humboldt County.

The council funds a whole series of vital services through its own budget, and administers many other projects through grants and matching funds.

Our programs and services range from education and day care to community water services, from natural resources protection to natural resources utilization, from police and fire protection to economic development and job creation.

Congress has selected us as one of ten model tribal governments nationwide for a demonstration project on what tribes can do without BIA hinderance or interference, yet the BIA has told us that *Puzz* prevents them from funding our budget after June 30, thus, on July 1 we will be forced to shut down our government and close the following programs: a governmental structure that employs over 250 people, an education and day care system, a comprehensive natural resources department, a planning department, a public utilities district, and several other programs.

Since our tribe's citizenship standards are important to us and our identity, let me describe them.

In 1949 the BIA induced the tribe to formalize its enrollment standard. The Hupas chose to start with a list of persons holding individual allotments on The Square. They made up about 90 percent of the list from that basic source, because those were the people who were part of the tribal community.

Some of the Indians alloted land on The Square were ones who had been admitted to the tribe under familiar anthropological affiliation terms, marriage, adoption, and aboriginal territory. But most allottees there were from long family lines of Hupa-language speakers.

The basic roll of 1949 was enlarged by about two dozen people who were not allottees or children of allottees to accommodate long-term resident Indians who were plainly part of the tribal community.

By definition, those placed on the tribal roll were deemed to be Hupas—Hupa citizens—and under the tribal constitution, all future members would have to be both descendants of that set, and at least one-quarter degree Indian.

Citizenship limitations like this are common amongst Indian nations and tribes, and among foreign nations, as well. Immigration policy and citizenship are inherent rights of government, and the U.S. Supreme Court has very plainly and often said that Indian tribes retain the right to set and live by their own membership standards.

We are amazed by the Yurok plaintiffs and their attorneys' attempts to make themselves into Hupas——

[Catcalls.]

Mr. RISLING [continuing]. So that they can claim land and resources that do not belong to them.

The plaintiffs are chameleons. They are actors, and their attorneys are ambulance chasers looking to maximize their fees. [Applause.]

As an example, in the first panel this morning: Jacque Winter grew up in Georgia and just recently, a couple of years ago, came back to live in Humboldt County; Roanne Lyall is a resident far north in Oregon; and Dorothy Haberman lives closest to the reservation in the city of Eureka, California.

Our tribe and our reservation should not be controlled by technicalities and Federal mistakes dating back to 1864 and 1891.

The legislation that has been introduced by the House by Congressman Bosco is a realistic and necessary solution to these problems because it will restore sovereignty of tribes over their homeland. It will not be a Fifth Amendment checking of anybody's interest, because it is also a fair solution. No reservation land will be sold except land will be restored to the Yurok Reservation. No one will have to relocate.

As explained in our written material, the future income from the resources of the Hupa and Yurok Reservations are comparable. The Yurok income will come mostly from the abundant Klamath River fisheries. The Hupa income will come from some fish and some timber. The Klamath Fishery clearly has a far greater value than the Hupa fish and timber combined.

Your Honor, there is no Independence Day celebration at Hupa this year. We are under seige by the Federal judicial and executive branches.

If Congress wants to prevent a disaster for tribal government and the Indian people it must move forward with legislation at once.

Thank you. [Applause.]

[Prepared statement of Mr. Risling appears in appendix.]

The CHAIRMAN. The Honorable Mervin George.

STATEMENT OF HON. MERVIN GEORGE, TRIBAL COUNCIL MEMBER

Mr. GEORGE. Good morning, Mr. Chairman and committee members.

Let me clarify. I am not a council member as it says on the statement.

My name is Mervin George, and I, along with my mother, Winnie George, are the spiritual leaders of the Hoopa Valley Tribe. We are not related to Dorothy Haberman or any of the other people that were first on the panel here.

We prepare for and put on our sacred religious ceremonial dances, which include the White Deerskin Dance and the Jump Dance. These dances are world renewal dances which we put on every other year, and they are done on The Square.

We have always done these dances there. The Hupa people have danced there always.

The leadership, as Ms. Winter talked about, comes down through my family. I inherited it. As for me not speaking, Jacque Winters is [phrase spoken in native tongue.] [Laughter.]

Only my people understood that.

Our White Deerskin Dance follows a specific path along the Trinity River, which flows through our valley. The Jump Dance stays at a place we call the center of our universe, and is also in the valley.

The Great Creator, whom the Hupa people call "Gehenay" set up these special places for us to dance many thousands of years ago. We dance for everybody. World renewal dances are what these are.

The Yurok people come as guests. They have no say in the preparation of these dances on the Hoopa Valley Square on the Reservation, as when I go down there to dance I have no say in theirs. We are two separate peoples; two different tribes with different languages. You heard my mother speak this morning, and you heard Mr. James speak—two different languages—very different. Nobody can understand each other.

We look the same. Our costumes are the same when we dance.

We are called Hupa people. We have always lived in that valley. We have done our dances and our living. Our being is there. We look on people that come in and try to take over our lands and our monies or our timber resources—whatever—these people, all they are interested in is money. It boils down to money.

It is amazing to me. I sit and listen to all of these people and look around—money. They have no care about the land and what is going to do. All they want to do is sell off that timber that is up there so we can dish out the money.

The Hupa people—this is their home. Our homeland is there. Understand that. This is Hupa homeland in that valley. The Yuroks have always lived down river. They are called "downriver people." You buy boats from those people.

A long time ago I was told that the Yurok were not allowed in the valley and that they were poison. The come up to a certain point in the valley and they camp there for our dances. They camp in a separate place. Like Mr. Lara said, they are two different peoples, two different dances, different languages.

We have the traditional people down there like Mr. Lara and those people that put on their dances. I respect those people. I respect all people when they come to our dances in Hupa. We invite them to come dance with me. They have no say though. We invite them to eat. That's the way we Hupa people are.

We don't try to take over. I don't go down to Yurok places and try to take over their land. They had redwood down there—lots of redwood—and they sold it all.

Dorothy Haberman speaks of homeland down there by Indian law. Hupas want their property by Indian law. They don't want anybody coming and trying to take over.

I don't think I'm making a lot of points with a lot of people except maybe my own people. I'm talking for Hupa people. I talk for my mother, my uncle, these people here.

It comes down to money. Greedy people. We're talking about our homeland.

We need some kind of legislation to make it possible for the Yurok Tribe to organize and for our tribes to peacefully coexist with each other.

Listen to us, please.

Two different peoples.

Thank you. [Applause.]

[Prepared statement of Mr. George appears in appendix.]

The CHAIRMAN. I am fully aware that in order to be knowledgeable of your problem I would have to hear from many more, but time does not permit me this morning to do so.

However, listening to all of you this morning I will respond to several things.

All of you, although you may be adversaries in this room, have many things in common. All of you are Indians, whether you call yourselves Hupas, Yurok, or what have you.

All of you have a common history of deprivation and tragedy. All of you have had your problems with the national government and the Bureau of Indian Affairs.

I am certain that if you can, with that common background, lower your voice, use less inflammatory rhetoric, and meet in the same room, something can result. I am convinced of that.

I am also convinced, because I have been in the Congress now for nearly 30 years, that though we try our best with the best of intentions, oftentimes the laws we pass relating to Indians do not serve the intended purpose. All they do is cause you greater grief and more confusion.

I would hope that if it is at all possible you can get together, as you have in this room, and work it out.

If the time comes when Congress is forced to act, may I assure you that we will call upon you once again to get your wisdom so that our decisions will be fair and equitable.

We have arranged to meet in hearing room number one, which is to the left of this conference room as you walk out—just outside this door. At 1:00 p.m., Mr. Alan Parker, the staff director of the Select Committee will be ~~in~~ there to meet with whoever wishes to present papers on your viewpoints, and he will convey those sentiments to the committee.

At 1 p.m. in this hearing room we will convene once again to receive testimony on the question of eligibility for health services.

So I thank all of you. You have been most attentive.

Although the rules do not permit demonstrations such as applauding, I feel that the men and women who have worked so hard in presenting their testimony deserve some accolades. [Applause.]

The CHAIRMAN. The hearing will stand in recess until 1 p.m.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

APPENDIX

Statement of

Dorothea J Theodoratus

On Issues Confronting the Indian People Affiliated with the Hoopa Valley Indian Reservation

Humboldt County, California

U.S. Senate
Hearing, Select Committee on Indian Affairs
Daniel K. Inouye, Hawaii, Chairman

June 30, 1988
Sacramento Board of Supervisors Council Chambers
700 H Street
Sacramento, California

My name is Dorothea J Theodoratus. I am a professor of anthropology and Native American Studies at California State University, Sacramento. I am also the president of Theodoratus Cultural Research, Inc., a research organization which performs contract work for environmental purposes, primarily in the areas of anthropology and history. I have conducted anthropological research in northern California since 1958, and since 1974 have concentrated on Native American issues and concerns in the contemporary world. I am the author of numerous reports and articles on Native Americans in California and the west. The statements herein are based on my research and that of my associates, Clinton M. Blount, Myreleen Ashman, and Sheri Nichols.

INTRODUCTION

This statement will provide background information on the crucial issues facing the people of Hoopa Valley Indian Reservation in Humboldt County, California. My purpose here is to provide information of both an anthropological and historical nature on the establishment of, and the events leading to, litigation concerning the Reservation. These issues have become extremely serious: they threaten longstanding relationships among Indian people and carry the potential of replacing past harmony with acrimony, to the detriment of all those affiliated with the Hoopa Valley Reservation. Other litigation concerning this area in recent years has centered upon subsistence (fishing rights cases) and First Amendment religious rights (Gasquet–Orleans road case). These issues, along with the focus of this hearing, place a tremendous burden on the Indian people of the area. This deserves our immediate attention.

The situation today at the Hoopa Valley Reservation is the result of a long chronology, beginning at contact with non–Indian settlers and continuing through the latter half of the nineteenth century when the Reservation was established and enlarged and ending with litigation in the twentieth century. This has resulted in an ongoing trust relationship between Reservation residents and the United States Government. The more than 130 years' flow of events has created a situation which is both extremely complex, and to this point, unresolved. This brief statement touches on three major themes: 1) the traditional societies ancestral to the peoples now affiliated with the Reservation, 2) the establishment of the Reservation, and 3) the events of the twentieth century, particularly the milestone legal cases which were initiated in the early 1960s. Historical and anthropological data are imperative for a sound analysis of both recent litigation and the basic nature of conflicts arising on and about the Reservation. The protracted nature of the recent litigation, particularly Jessie Short, et al. v. United States (U.S. Ct. Clms, No. 102–63) and Lillian Blake Puzz, et al. v. United States (U.S. Dist. Ct. NO. C 80 2908 TEH) is in part a product of a highly variable interpretation (and, in many cases, misinterpretation) of the nature of the traditional societies in the region and the facts and intentions surrounding the Indian's relationship with Government. It is my hope—through this testimony and consideration of the scholarly materials recommended—that the Senate's review of these issues will assume a historical perspective.

Ethnographic Background

The northwest corner of California has a lush environment more characteristic of Oregon and Washington coastal regions than that of the remainder of California. At the time of non-Indian contact, the traditional societies occupying this region (see accompanying tribal territory map[1]) based their lives on a very sophisticated system of fishing, hunting and gathering which produced resources sufficient to facilitate their creation of stable villages, systems of class and social stratification, and labor specialization. Diet was based on what were at the time seemingly inexhaustible natural resources, including abundant salmon and other fish runs, deer and other wild game, and a bounty of acorns, various seeds, berries and greens. While it may be said that there were many cultural differences between peoples of this region, it is far truer to characterize these differences as variation in the expression of a common cultural adaptation within a particularly abundant environment.

Of particular importance in the present proceedings is the nature of the social institutions or social organization of the pre-contact era (generally pre-1850). None of the groups indicated on the accompanying map existed as tribal entities. They did not possess central political authority, centralized economic systems or a communally held concept of territory. What they did have in common were cultural similarities in such areas as religious expression, material culture, architecture and similar cultural elements. Each group shared a common language (different from every other group's language), and it is via the analysis of these languages that anthropologists in late nineteenth century proposed tribal names which we now take for granted, such as Yurok, Tolowa, Karuk and Hupa. We must not be misguided by the belief that tribal names as now used implied a tribal identity at the time of contact.[2] Rather, these groups appear to have been based upon affiliations within and between stable villages, with a particular importance being given to familial ties and relationships. These villages were marked by a highly developed class system which included, as some have categorized, a high class or aristocracy, commoners, and indentured persons. Within this context these groups practiced complicated legal customs which included professional functionaries, systems of penalties, and detailed methods for proving transgressions. This pattern of social organization is far more like that found throughout the Pacific Northwest, and is less like the remainder of California and the Great Basin. The anthropological and historical record also clearly indicates that trade, ceremonial and even marriage relationships were not confined to the linguistic boundaries we now know as Hupa, Yurok, etc. Rather such relationships between groups were common, and in fact remain so today. The onslaught of settlement in this region began in the early 1850s with a brief but flourishing gold rush on the Trinity and Klamath rivers. Unlike the Sierra Nevada region of California, this gold rush did not produce the virtual destruction of traditional societies. Although there were violent clashes between the Indians and miners, the traditional peoples emerged from this era largely intact as cultural entities. Their greater battles were to come somewhat later in the more persistent relationship with permanent settlers, the U.S. military and federal government.[3]

Establishment of the Reservation

The establishment of the Hoopa Valley Indian Reservation as well as the status of predecessor Indian reservations in the area, is undoubtedly the most variably interpreted aspect of the historical record. Issues raised concern the reasons the reservations were established, who the residents were to be, the responsibilities of the federal government, and the intentions—both expressed and applied—of federal administration subsequent to establishment. A general historical background is required before the complexity of these issues can be fully appreciated.

In the early 1850s the federal government sent treaty commissioners to California to prepare a series of treaties with California Indian groups. The now famous 18 unratified treaties were the result of this effort, and California Indians were left in a precarious and largely landless state. These treaties were prepared to create a relationship with the indigenous populations, thereby releasing the majority of California land into the public domain, and subsequently to non-Indian settlers. Unfortunately, this orderly process was doomed from the outset, since by 1849 the state was virtually overrun by gold seekers who willfully or inadvertently completed the job begun by the Spanish and Mexican colonists of dismantling and reshaping California Indian societies. The condition of the Indians in California prompted radical action, and in 1853 the president was granted authority to establish five military reservations in California and the territories of Utah and New Mexico (Act of March 3, 1853, 10 Stat. 238). Ostensibly, these reservations were created to protect the surviving Indian peoples from the depredation of settlers. Unfortunately, the establishment of these reservations resulted in forced migrations to the reserves, intermingling (in some cases) of heretofore unrelated communities, and hastening of the breakdown of traditional social institutions. One of these reservations was the Klamath River Reservation, which extended along the Klamath River from its mouth at the Pacific Ocean, one mile in width on each side of the river, for a distance of about twenty miles up stream. Attempts were apparently made to encourage agricultural practices among the "Klamath River Indians" or "Klamaths" (now referred to as Yurok). However, in early 1861 a devastating flood destroyed the arable land on the reservation, and despite the fact that the river itself still held the resources of traditional importance to the Yurok and others residing there, the reservation itself went into decline as an administrative entity. Many Indian people who had been removed to this reservation now returned to their traditional homelands, although a substantial number of people were said to have remained. Subsequent to the flood, many proposals were put forth to return this military reservation back to the public domain for distribution to settlers.

In 1864, President Lincoln was empowered to create reservations—in this case, four tracts of land, with one of them specifically to be located in the "Northern District" of California. Austin Wiley, then Superintendent of Indian Affairs in California, quickly located a tract of land 12 miles square below the confluence of the Trinity and Klamath rivers for the purpose of establishing a reservation under the Act of 1864 (Act of April 8, 1864, 13 Stat. 39). At about the same time, Wiley treated with the Indian communities, then known as the Hoopa, South Fork, Redwood, and Grouse Creek Indians. This "treaty" required the cessation of hostilities on the part of the main groups and referenced the creation of the Hoopa Valley Reservation. Apparently this treaty was never submitted to the senate for ratification, although its wording and interpretations of its intent are critical in the recent litigation. President Grant formally established the Hoopa Valley Reservation by Executive Order in 1876 (Exec. Order, June 23, 1876). This reservation comprised the area now referred to as the "Square" (see the accompanying Hoopa Valley Indian Reservation map).

While the Klamath Reservation continued to languish, pressure built to create a reservation on the Klamath River which would carry the status accorded to other reservations created in California under the Act of 1864. Eventually, the area known as the Extension (also known sometimes as the Addition) was added to the existing Hoopa Valley Reservation October 16, 1891, and portions of the older military reservation to the mouth of the Klamath River were returned to public domain. The configuration of the Hoopa Valley Reservation has remained essentially unchanged since 1891, and it consists of that area of land indicated on the accompanying map.

The origins of the Extension require some comment. Under the Act of 1864, the President was authorized to create only four reservations in California. These were the Hoopa Valley, Tule River, Mission, and Round Valley reservations. President Harrison, exercising the discretion allowed by the 1864 act, chose to enlarge the existing Hoopa Valley Reservation rather than to attempt to create an entirely new entity (October 16, 1891).

The Twentieth Century: Conflict and Litigation

The early twentieth century saw the residents of the Hoopa Valley Reservation engaged in an increasingly binding relationship with the federal bureaucracy headed by the Bureau of Indian Affairs. Much of the residential land within the Reservation had been allotted to individual residents of the Reservation, who therefore controlled it as personal property. Parts of the reservation were left unallotted, particularly those areas in the more mountainous regions of the Square; these lands remained in trust status for the Reservation. In the 1950s, timber exploitation of these areas began in earnest with the concomitant production of income to the Reservation from nonallotted lands. Administrative entities on the Reservation were established in the 1930s. By the 1950s the Hoopa Business Council began to exclude those living on the extension and to take control of the resources in the Square and the income produced therefrom. It is this situation which has resulted in protracted litigation represented by the Short v. United States and Puzz v. United States cases. These milestone cases are described below with reference to the positions of the litigants and the findings of fact and court decisions.

Jessie Short, et al. v. The United States

In 1963, suit was brought against the United States (the Bureau of Indian Affairs in the Department of Interior) by members of the Reservation who believed they were being deprived of their rightful share of the substantial income produced by timber harvest from the unallotted lands on the Square. These plaintiffs were mainly individuals of Yurok ancestry who lived on the Extension—or were otherwise deemed ineligible or had been denied admittance to the Hoopa Valley Tribe—and therefore had not received a share of the revenues. The argument presented by the plaintiffs, while necessarily abbreviated here, was that the actions of 1891, which created the Extension, resulted in a single unit known as the Hoopa Valley Reservation, and that all members of that Reservation should share equally in the income and benefits accruing to the Reservation whether or not that income resulted from the Square or the Extension. The defendants (which ultimately included the Hoopa Valley Tribe by recognition of the court) claimed that the Square and the Extension were in essence separate entities, and that residents of the Square who met certain qualifications concerning ancestry and tenure were the rightful recipients of the revenues generated by exploitation of the Square. Consequently, those living off the Square who did not satisfy membership requirements were not entitled to a portion of the revenues. This case was heard in 1973 in the United States Court of Claims, and the lengthy decision included a detailed findings section as well as a decision squarely in favor of the plaintiffs.[4] The Jessie Short case eventually was taken to the Supreme Court, although that Court decided not to hear the case.

The Court of Claims decision states clearly its interpretation of the historical facts. These are: 1) that the original Square was not intended solely for the benefit of the Hoopa, 2) that the Square and the Extension formed a single entity without reference to separation of districts or a separation of benefits resulting from the commercial use of any portion of the Reservation. As a result, the administrative actions of the Bureau of Indian Affairs—and perhaps by inference, the Hoopa Valley Tribe and Hoopa Business Council—were considered illegal. The plaintiffs were therefore entitled to recover a proportionate share of the income.

The Jessie Short case did not, however, include litigation on this matter, and subsequent litigation has been aimed at the nature of the settlement and the intervening administration of the income. Since 1974 the Department of Interior has held in trust the majority of income from timber sales which they will not expend for the benefit of the Reservation.

Puzz, et al. v. United States, et al.

The Puzz case decided in United States District Court in April 1988 was based on allegations again by individuals primarily of Yurok descent, who claimed that the continuing relationship between the U.S. Government and the Hoopa Business Council was effectively depriving them of a voice in the administration of the Reservation. The plaintiff's claims were based largely on the outcome of the Jessie Short case, which established the nature of the Reservation as a single entity without preferential benefits to any given tribal group or organization. The Court found that the various arguments offered by the defendants were generally not supported, and restated the findings of the Court of Claims of the Jessie Short case. The District Court noted, however, that the Short decision did not determine important issues concerning "who has the right to decide how reservation income should be spent, to manage reservation resources, and to administer social services" (NO. C 80 2908 TEH, Puzz et al. v. U.S. et al., p. 15, lines 17, 18, 19). This decision, in essence, limits the authority of the Hoopa Business Council and states that funds must be used for the benefit of all Indians on the Reservation in a nondiscriminatory manner. The federal government is also to maintain a supervisory authority over all spending, and to develop a plan to include "non-Hoopas" in the use of Reservation funds. Pursuant to this decision, it is my understanding that a plan has been submitted and the plaintiffs are currently discussing their concerns about this proposal. The defendants in the Puzz case requested a stay of the District Court order; however, the Court declined the stay.

Conclusion

The current situation on the Hoopa Valley Reservation represents the result of a tangled chronology of events beginning at the time of contact among the indigenous peoples and outsiders. The failure of even so cogently argued and researched a case as Jessie Short v. the United States to bring about a resolution testifies to the difficulty of these issues. My recommendations to the Select Committee are the following:

1. The anthropological, historical, and legal documents concerning the Reservation are noteworthy for their completeness and, in the main, unbiased attempts at interpretation. Thus this voluminous body of work is worthy of very close scrutiny should you be put into a position of considering legislation. This examination should focus particulary on Bureau of Indian Affairs administrative interpretations and practices.

2. From my personal experience as an anthropologist working in this region, it is important to remember that the cultural affinity, familiarity, and interchange between peoples represented in recent litigation outweighs the acrimony generated in the course of these disputes. These are people who have survived attempted annihilation, forced acculturation, and hardships so common to Native American reservation life. It can be fairly said that disharmony between peoples otherwise so closely tied would be detrimental to all concerned.

3. It is my recommendation — should the Committee continue its hearings on these matters — that the extensive documentary record be balanced with an appreciation for the personal testimony of Reservation members. It has been my experience that personal interchange is a respected and powerful communication technique for Native American peoples. They should be given the opportunity to exercise their considerable skills of personal expression in the context of these hearings.

I commend the committee for considering this matter.

Footnotes

1. The tribal territories map is a generalized location of precontact residential areas. This map must not be construed as a true tribal territorial allocation since as noted in the body of the testimony both the concepts of unified tribal identity and tribal land tenure were not known in this region.

2. For various reasons tribal identity has become a significant part of their contemporary life and is no doubt a significant component of personal ethnic identity, personal alliances, and economic and political action, despite the fact that these tribal identities were either encouraged by or created by scholars.

3. The ethnographic and historical literature on this region is both varied and of a generally excellent quality. I recommend a series of articles by Gould, Pilling, Elsasser, Wallace and Bright contained in the 1978 Handbook of North American Indians, California (Volume 8) prepared by the Smithsonian Institution. These articles will also guide the reader to significant earlier works on the region by such noted anthropologists as A. L. Kroeber, T. T. Waterman, P. E. Goddard. These works, and the anthropological and historical perspectives in general, are crucial, since many of the contemporary issues derive from traditional preferences and practices in social, economic and political organization. Also, these data are useful in interpreting the various claims made by participants in the litigation, particularly since the early anthropological accounts address the seminal issues of population, village location, and resource gathering areas.

4. The opinion of the Court of Claims is a remarkable document because of the extensive research done in the compilation of findings. These findings comprise both a history of the establishment and administration of the Reservation. These findings in the main appear to succeed in interpreting the original intentions of those who authorized the establishment of the Reservation.

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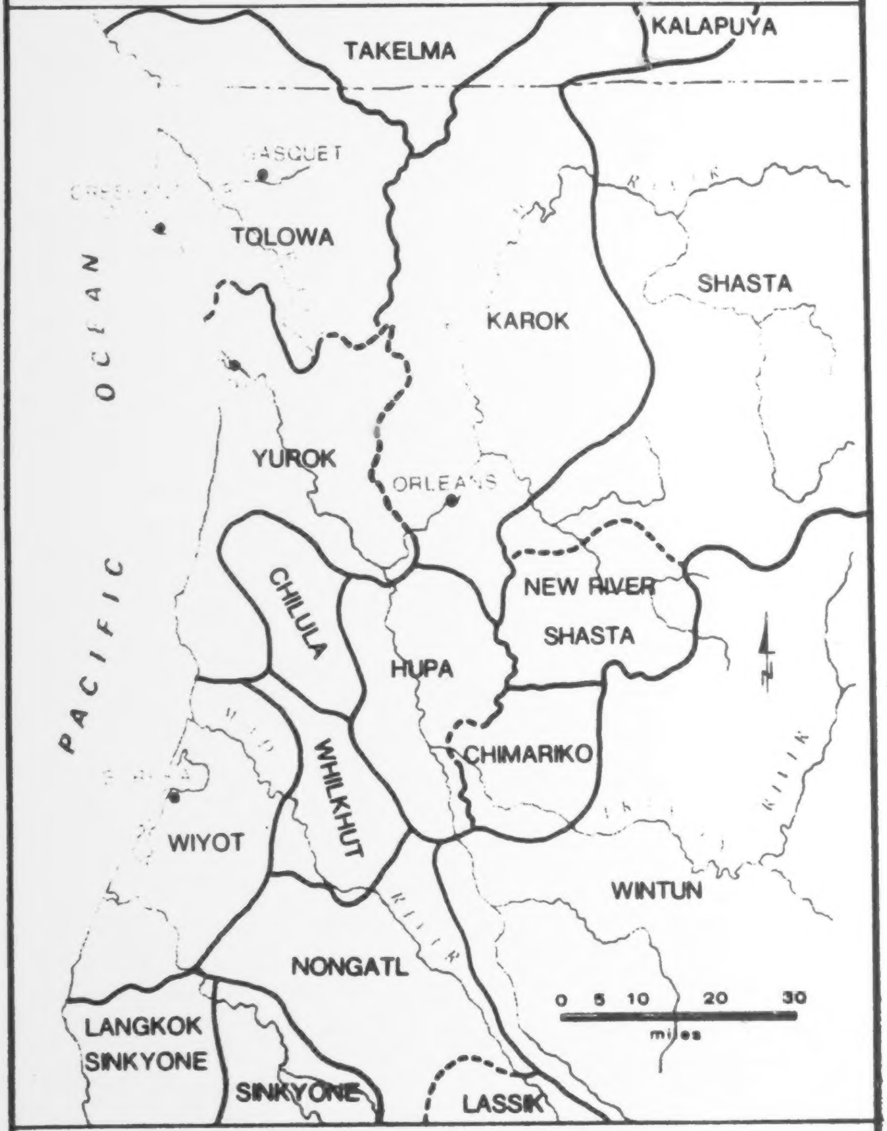
Fair Oaks, CA 95628

TRIBAL TERRITORIES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SOURCES
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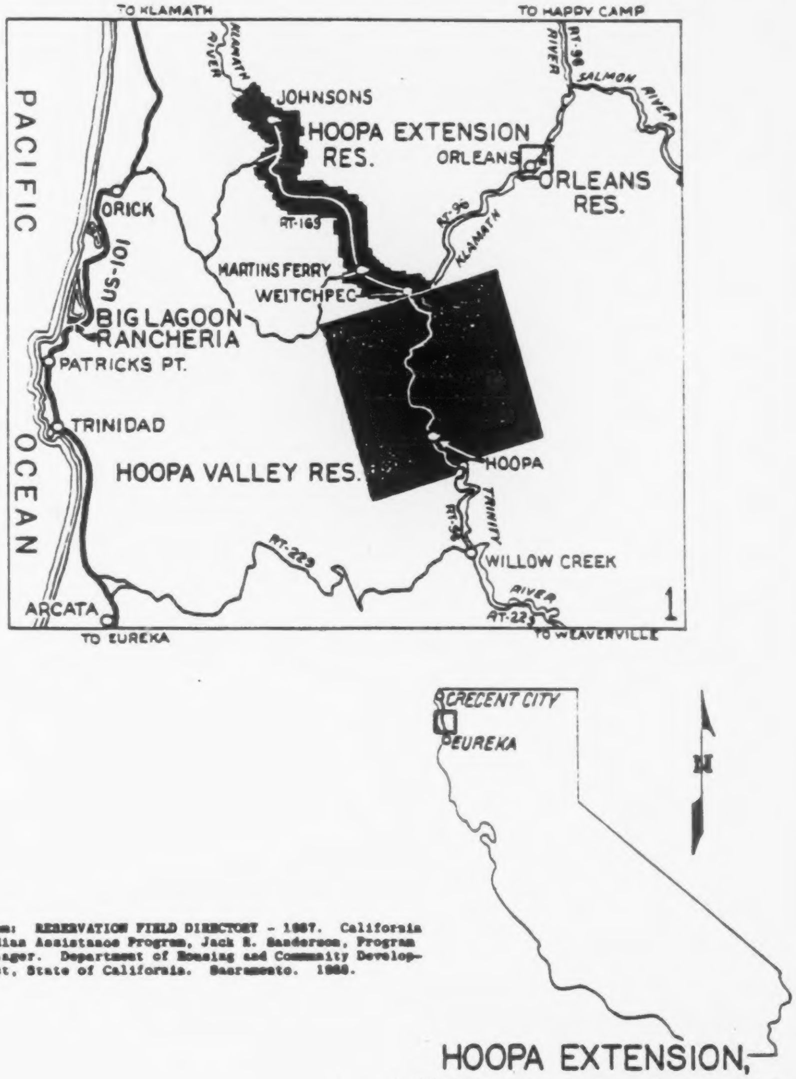
HEIZER, 1978
WATERMAN, 1920


TO KLAMATH
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KLAMATH
US-101
MARTINS FERRY
WEITCHPEC
BIG LAGOON RANCHERIA
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From: RESERVATION FIELD DIRECTORY - 1987. California Indian Assistance Program, Jack R. Sanderson, Program Manager. Department of Housing and Community Development, State of California. Sacramento. 1988.

HOOPA EXTENSION,
HOOPA VALLEY, ORLEANS
RESERVATIONS.
BIG LAGOON RANCHERIA

Testimony given by Jacque [illegible] Winter

June 30, 1988 - Sacramento, CA

My name is Jacque [illegible] Winter. I am 3/8 Yurok and 1/8 Tolowa. I was born on the Hoopa Valley Reservation. For the past fourteen years, I have lived and taught on the "Square" at the only high school on the entire reservation. The school district draws students from 1200 square miles. Fifty-nine percent of the students at the high school are Indian. Of those, over 50% are not members of the Hoopa Valley Tribe. There are several issue I want to talk about today: culture, identity, and justice.

CULTURE has its beginnings in the roots and traditions which are passed from one generation to another, from elder to youth. Those elements which make up one's "cultural" background do not depend on where an individual lives but rather on how an individual lives. Momoday speaks of "blood memories" which is what my mother a full-blooded Indian passed on to me and to my children. For example, I find no fault in the spiritual leader of the Hoopa Valley Tribe living and working in Eureka which is 120 miles away round trip. Several years ago, because he could not speak the language, when Merv George first took over as the main dance leader he had Ruel Leach, a Hupa Short plaintiff, say the prayers for the White Deerskin Dance.

The Reservation is composed of Indians of several tribes but as Indians of the Hoopa Valley Reservation, we participate together in our dances---while retaining our individual tribal traditions. IF we can worship (dance) together, attend school together, have children together, I say that we can in the same spirit work together to create a unified, self-governing, self-directing Reservation which will benefit all.

Howard Dickstein wrote in March, 1981, when he was counsel for the Hoopa Valley Tribe "...Pointing to 'the Yuroks' as the main enemy of the Hupa people seems to us destructive for a number of specific reasons. First, it does not take into account that most Hupa Tribal members themselves have Yurok blood and vice-versa, so that the distinction,which may have been valid at one time, is now largely a myth, moreover, encourages self-destructive rivalries and serious identity problems between tribal members and families and even within families themselves." He was fired within two weeks. (see attachment)

IDENTITY: Chief Seattle said that "We are all a part of the web of life and what affects one part of the web affects the whole." This is especially true of the Hoopa Valley Reservation where the web of life is so intricately woven. My son, a Short plaintiff, is married to a Hoopa Valley Tribe member. Her father, sister, and brother are all Hoopa Valley Tribe members; however her mother, who is 1/2 Hupa and a Short plaintiff, is not. My grandsons who are 1/4 Hupa and 1/4 Yurok were rejected by the Hoopa Valley Tribe. Herman Sherman, their great-grandfather is one of the few full-blood Hupas. He is the only one who knows all of the old songs and traditions for dances no longer performed. Only two of the Hoopa Valley Business Council members are predominately of Hupa blood. In fact, Lyle Pole Marshall is 1/16 Hupa. Their blood is as mixed as ours. They have no more right to the Square than we do. (see attachment) I have a 1/4 blood grand-daughter whose father is a Hoopa Valley Tribe member and whose mother is a Short plaintiff. Like countless other Indian children, she needs to be acknowledged as an Indian of this Reservation. Legislation which denies her an identity, a tribe, a reservation scares me.

We don't want to become Hupa's---as La Donna Harris said "...the blood runs the heart and the heart knows what it is." Our "blood memories" tell us whether we are Yurok, Hupa, or Karok.

You hear about Hupa aboriginal lands; however, you do not hear that 5 1 miles south of the northern border of the "Square" on highway 96, existed an aboriginal Yurok village. This is why, in 1950,when 106 people decided to form a tribe by a vote of 63-33, several Yurok and Karok families were "adopted" into the tribe. (see attached).

JUSTICE: perhaps the most difficult part of surviving in "one nation under God, indivisible" is constantly realizing that freedom is fragile and justice is not only blind, but sometimes bigoted. The BIA created the Hoopa Valley Business Council and said it owned the "Square." Thirteen federal judges declared that the Hoopa Valley Tribe has no legal or historical claim to ownership of the "Square." The United States government doesn't like to be found wrong. It has armed the Hoopa Valley Business Council with over $10,000,000 to prolong---not win---the Short and Puzz litigations.

Based on the Puzz decision, we FINALLY have an equal chance for self-determination. We have, in three weeks, gathered over 800 signatures requesting that the BIA conduct a referendum for a Reservation-wide government.

The Short case forces the BIA to confront the reasoning for its policies at the most fundamental level- basic property law. The question is this: given that all Indians of the reservation communally owned the reservation before the 1950's, could the BIA alter their ownership interest by recognizing "tribal groups" which do not consist of all Indians of the reservation. I don't see how it can;however, it certainly has been biased and allowed the Hoopa Valley Business Council to be biased. We ask for one person, one vote with majority rule. A principle that I assume is basic in the United States of America.

Testimony of Roanne Lyall
A Klamath River Yurok Indian of the Hoopa Valley Reservation
Before the
Senate Select Committee on Indian Affairs
June 30, 1988
on
Problems on the Hoopa Valley Reservation

My name is Roanne Lyall. I am a plaintiff in SHORT v. THE UNITED STATES; I have been qualified by the Claims Court as an Indian of the Reservation entitled to share in the income from the entire reservation, including the Square, equally with all other such Indians, including the Indians of the Square. I am also a plaintiff in the civil rights action, PUZZ v. THE UNITED STATES, which sought declaratory and injunctive relief from the arbitrary and discriminatory policies and actions of the Department of the Interior/Bureau of Indian Affairs.....the agencies charged with carrying out the trust responsibility obligations of the United States to protect all Indians and their property.

The problems on the Hoopa Valley Reservation were created by the unauthorized and illegal course of dealings between the Department of the Interior and the Hoopa Valley Tribe, beginning in 1950. The Department of the Interior's pattern of administrative mismanagement of the reservation has led to 25 years of litigation.

The argument is about the political and property rights of the Indians of the reservation......RIGHTS of the Indians to share equally and indistinguishably in the use and benefits of the reservation......RIGHTS of the Indians to participate in the management of the land and resources of the reservation.......RIGHTS derived from our status as "Indians of the Reservation"; NOT from membership in some artificial "sovereign" tribal organization as mandated by federal officials. This is the problem. The problem was not created by a clash of cultures, the problem is not Indian religion or ceremonies, nor is it about ethnic differences. It is about control of property and money.

The Courts have not misconstued or misinterpreted the 1864 Act of Congress which created the reservation or the 1891 Act which extended the boundaries. The simple fact is that Congress did not nor did it intend to grant any territorial rights to any specific tribe. The reservation was created for the use and benefit of all tribes, bands, and groups of Northern California Indians who were living there or who could be induced to live there. The qualified SHORT plaintiffs are the descendants of those Indians for whom the reservation was established. We have been judged by the same standards used to determine membership in the Hoopa Valley Tribe....we are all equal. We, as well as the members of the Hoopa Valley Tribe, are made up of assorted tribes, bands and groups which have intermarried, merged and divided extensively over the history of the Reservation.....groups which have always, simply, in fact, existed, irrespective of federal recognition or formal organization.

Our reservation is tribal, in the sense that it's land and resources are communally, not individually, owned. The simple fact is that the claim of the Hoopa Valley Business Council, as currently composed, to exclusive rights in the Square has no validity in ethnology, history or law; and, the decision of the Department of the Interior to bestow exclusive rights on the council was unauthorized and illegal.

The Hoopa Valley Reservation, Square and Extension, is one unified reservation; no person or group has exclusive rights in the Square or any other part of it. Membership in the Hoopa Valley Tribe does not confer special rights or entitlements in reservation-wide resources or government, beyond the rights shared by all Indians of the reservation.

The April 8th Order in PUZZ v. THE UNITED STATES represents the successful culmination of a 25 year effort to rectify the unauthorized and illegal actions of the Department of the Interior. Since the reservation does not have a tribal government representing all Indians of the reservation, the Court ordered the BIA, on pain of contempt, to submit a plan to administer the reservation for the equal benefit of all Indians in a non-discriminatory manner. It ordered a stop to discrimination in the provision of funds, services and the management of resources. We believe the Court has opened the door to Indian self-determination and reservation self-government for the first time in the history of the reservation. In defining the trust responsibility obligations of the Government to the Indians of the reservation, the Court said the Government has a duty to allow all Indians of a reservation to participate in self-government on a non-discriminatory basis. We are acting on that statement. To date, we have more than 700 signatures on a petition requesting the BIA to conduct a referendum election to determine whether the Indians of the reservation want to establish a reservation-wide administrative body to manage the unallotted lands and resources of the reservation and to determine proper use of reservation funds. Ross Swimmer has indicated that he will not authorize the referendum....he says there is no law that says he has to. This is the attitude of our "trustee"......the protector of our property rights. This is our problem This is why we have been in the courts for the past 25 years. If the federal agencies put as much effort into complying with the court decisions in SHORT and PUZZ, & living up to their trust responsibility obligations as they put into trying to subvert and thwart those decisions, we wouldn't have a problem. If and when they refuse to conduct the referendum, we will be back in Court. The Court has said it can enforce the BIA's trust responsibilities to all Indians of the reservation, so let it.

From 1864 to 1950, the Government ran the reservation. From 1950 to April 8, 1988, the BIA unlawfully allowed the Hoopa Valley Tribe to run the reservation. We do not want the BIA running the reservation again. We want equal rights. We want a voice in our future and in the management of our land and resources. We want a vote. We do not want to be stripped of our political and property rights through legislation enacted to divide the reservation.

In his statement in opposition to HR 4469, Professor Clinton says it better than I possibly could, he says, " Apart from the unconstitutional aspects of the partition plan proposed, I oppose the nonconsensual partition proposal as bad policy. It is an arrogant, paternalistic, anti-democratic effort to subvert the legal processes by which Indian rights are enforced through courts. Passage of such high-handed legislation would place the stability of all Indian rights, indeed, perhaps all property rights, in jeopardy. The involuntary, nonconsensual partition plan certainly represents a threat to concept of the rule of law in the field of Indian Affairs and possibly to the legal processes by which all property is protected.

Testimony of Wilfred K. Colegrove
Chairman, Hoopa Valley Tribe of California
Before the
Senate Select Committee on Indian Affairs

June 30, 1988

My name is Wilfred Colegrove and I am the Tribal Chairman of the Hoopa Valley Tribe. I live on that portion of the Hoopa Valley Indian Reservation known as the "Square," where our Tribe has lived and governed its affairs for over 10,000 years. Mr. Risling and I are elected in a democratic election by the tribal membership. Today, we are expressing the views of our people. On behalf of the Hoopa Valley Tribe, I want to thank this Committee for the opportunity to be here today and testify in support of the introduction of legislation that will resolve our Reservation's management problems.

The Hoopa Valley Tribe and the Reservation are in the midst of an urgent crisis that only Congress can resolve. Since 1963, our community has been trapped in a vicious cycle of claims lawsuits that are destroying tribal government and causing human misery.

Without regard for Indian people and precedent setting bad Indian law which may affect other Tribes, these claims lawsuits are perpetuated by eight law firms seeking huge financial rewards if they are successful in destroying the Hoopa Valley Tribe. These law firms are led by one of the largest law firms on the Pacific coast.

The courts cannot solve the problems caused by the lawsuits, and the Bureau of Indian Affairs (BIA) has exploited the problems. Because of a court decision handed down in April of this year, the BIA is taking over Hoopa Tribal Government. Essential human services have been drastically curtailed and economic development projects have ground to a halt. The BIA has withheld tribal budget funds we are entitled to, and as a result Hoopa tribal government is shutting down. Congressional action is long overdue, and without it there is no end in sight to the lawsuits, the bureaucracy, and the suffering.

Legislation is urgently needed that would stop this BIA takeover of tribal government, and permit the Congressional policy of tribal self-determination to succeed on our Reservation. Such legislation would also correct a problem which undermines timber management at Hoopa, and threatens every federally recognized Tribe that has timber.

This is what we need: the present Reservation must be separated into two reservations, each governed by a tribe for its own people. An act of Congress can free the Hoopa Valley and the Yurok Tribes of excessive court and BIA interference. You can end the pressure to terminate our tribes that is coming from urban areas, from people who do not want to participate in tribal life on the reservations.

In my testimony I will discuss the historical background that has led to the current mess. After that, we have two more Hoopa witnesses who will speak. Mr. Mervin George is the recognized spiritual leader of the Hoopa Tribe and keeper of our sacred religious ceremonial dances. Mr. Dale Risling is a member of our Tribal Council and a former Tribal Chairman who has been involved in Hoopa tribal affairs for all of his adult life.

Basically, the problem needing corrective legislative action was caused by the joinder in 1891 of two historically separate, non-contiguous reservations through an Executive Order. In the mountains was the historic Hoopa Valley Reservation, which is known as the "Square" of the present-day reservation. The area at the mouth of the Klamath River was the historic Klamath River Reservation, and along with this stretch of land in between it and the Square, is known as the "Extension" of the present-day reservation.

One of the most important points we want to make is that the Hoopa Valley Tribe is a genuine traditional tribe with a continuous tribal identity dating back to time immemorial. We have always dealt in good faith with the United States, beginning with the Treaty we signed in 1851. No California Indian treaties were ratified, but the United States has repeatedly recognized the Hoopa Tribe's right to live on and govern its ancient homeland, the Hoopa Square.

In the 1850s and 1860s there was war in California. To help bring about peace in 1864, Congress authorized establishment of four tracts of land in California for Indian reservations. The limit on the number of reservations, and other parts of the 1864 Act, were later repealed by Congress, as detailed in our written submissions. In any event, under the 1864 Act, the federal Superintendent negotiated an agreement with our Tribe and our allies, by which the federal government protected our traditional homeland. In fact, "Big Jim," one of the leaders from Matilton Village, who was instrumental in formulating this agreement, was the grandfather of my grandfather.

The Reservation reserved by the 1864 agreement is about 45 miles upstream from the Pacific coast, and was entirely unrelated to the Klamath River Reservation which had been established along the coast in 1855 for the Klamath River Yurok Indians. Both we and the Interior Department considered the 1864 agreement to be a binding inter-governmental agreement. It was not submitted to the Senate for ratification, but it was performed through Congressional appropriation acts; and, finally, in 1876 issuance of an Executive Order.

Our trouble began when non-Indians living in the coastal area challenged the validity of the Klamath River Reservation which at the time contained some of the finest stands of redwood forest in the world. Through the Reservation ran the Klamath River which provides some of the largest chinook salmon runs on the Pacific coast. They argued that it constituted a fifth reservation in California and, thus, violated the 1864 Act. A court agreed with the non-Indians, and bills were introduced in Congress to abolish that Reservation completely.

To protect that land for the Klamath River Yuroks, the Interior Department suggested a new Executive Order, extending the boundaries of the Hoopa Square to link up with the Klamath River Reservation, and this was done on October 16, 1891.
Despite the merger of the reservations' exterior boundaries, the Hoopa Valley Tribe and the Klamath River Yuroks conducted their affairs separately.

Beginning in the early 20th Century, land holdings on the Klamath River Extension were individualized (allotted), and individual Yuroks sold their timber and their lands. The Interior Department sold the "surplus" land of the Extension and the proceeds were used for the benefit of the Yurok Tribe, not for us. Most of the Hoopa Square remained unallotted, and only small parcels for house lots were distributed to members of our Tribe.

Because of better access to the coastal transportation systems, the major portion of the Yurok timber had been harvested by the 1950's when the Interior Department began selling Hoopa tribal timber. Under federal law, income from our timber was used by the Hoopa Tribe for essential governmental functions, and the remainder was distributed to individual tribal members per capita.

But in 1963, a few people brought the Short lawsuit challenging the exclusion of Indians of the Klamath River Reservation (and descendants) from the per capita distributions. The claims attorneys rounded up 3,800 individual plaintiffs to intervene in the suit. It needs to be understood that these plaintiffs were and are not Hoopa or Yurok tribal members. Many of the plaintiffs were descendants of the pre-1900 Indians of the Klamath River area. The land allotments given to them or their ancestors had, with few exceptions, been sold and the descendants lived in non-Indian cities. Fewer than 20% of the Short plaintiffs live on the Klamath River Reservation or the Hoopa Square.

Nevertheless, in 1973, the Court of Claims ruled that the Interior Department had been wrong to use proceeds from our timber sales solely for our tribal members. That narrow decision has over years turned into a public disaster. It held that all "Indians _of_ the reservation" are entitled to share when timber proceeds are distributed. The court invented the term--"Indians _of_ the reservation" to describe entitled plaintiffs. Please be aware that the overwhelming majority of the "Indians _of_ the reservation" do not live _on_ any part of the reservation. For the past 15 years, the court has tried to figure out which plaintiffs are "Indians _of_ the reservation" and therefore entitled. One thing we know: the "Indians _of_ the reservation" are not the Yurok Tribe. You are going to hear that the majority of the reservation Indians aren't benefitted by tribal government. Please understand that the entitled _Short_ plaintiffs are not a majority of the Indians living _on_ the reservation or anywhere near it.

You must understand that the problems afflicting this Reservation cannot be settled without Congressional intervention. In our written submission we will fully explain the earnest settlement efforts of the past 15 years. All have failed. For example, in 1976 the two California Senators wrote to all _Short_ parties inviting them to a settlement meeting; the San Francisco firms representing plaintiffs refused. In early 1978, federal mediators spent months talking with the factions of plaintiffs and also with us. They gave up, noting that the Williams family, "saw little value in negotiating a settlement." (A large group of related plaintiffs are referred to as the Williams family. Dorothy Haberman is a member of the family.) Later that year the Hoopa Valley Tribe prepared a generous offer and delivered it in a sealed package, to be opened by a negotiating team representing the _Short_ plaintiffs. The package languished on the table and was never opened because the plaintiffs refused to appoint a team.

In 1979-80, another person with influence among many plaintiffs, Allan Morris, proposed a settlement offer. It too was attacked by other plaintiffs. In early 1984 the Hoopa Valley Tribe drafted a bill, sent it to every _Short_ plaintiff, and held public hearings at Klamath, Eureka, and Hoopa, California. Several dozen plaintiffs supported the idea of seeking legislation and ending the _Short_ case, but larger numbers objected strenuously. Then, in 1985, the Justice Department and plaintiffs' lawyers urged Judge Margolis to decide the amount of damages entitled plaintiffs would receive, hoping that would allow settlement of the remaining matters. But when the judge did so in December, 1985, and convened three days of settlement talks in San Francisco, plaintiffs reviled the judge's decision and ultimately refused to sit down at the bargaining table to discuss "tribal concerns" with the Hoopa Valley Tribe, as the judge had directed.

A final effort to settle limited issues in Short failed in the spring of 1987 when plaintiffs rejected the terms and conditions their lawyers had worked out with the Justice Department. The sad fact is that it is impossible to get the consent and cooperation of 3,851 individual plaintiffs, let alone the thousands of potential plaintiffs who do or may meet one of the many vague standards of "Indians of the Reservation," as used in the Short and Puzz cases. We cannot reach a binding agreement with the whole world; only Congress can settle the matter. No internal political process is sufficient when the plaintiffs are so widely scattered over the United States and foreign countries.

Much has been said about the value of the timber on the Hoopa square vis-a-vis the value of the fishery resource of the Klamath River. Without wanting to get into a major debate on this issue at this particular time, I would like to make one or two points. It has been alleged that the timber resource has the potential to generate in excess of $5 million per year. We challenge this contention. It is true that back in the early 1970's, before the BIA began to impose the sustained yield restrictions on timber harvest, there were some extremely large cuts which drove up the average yearly income from the resource. This resulted from the fact that the BIA was not properly managing the timber resource for preservation and it made no attempt to generate a consistent yearly cut.

It is also true that before the crash in the timber market in the early 1980's timber did go as high as $275 per 1,000 board feet. We feel confident, however, that if you speak with timber experts in the Northwest you will learn that the $275 per 1,000 board feet was an extreme price which is not likely to occur in the future. You will also learn that modern preservation methods will not allow cuts of the size previously taken in the early 1970's.

For example, there were 83.3 million board feet of timber harvested from 1981 thru 1986. This timber sold for a total of $7.3 million. This is an average of 13.9 million board feet per year at an average sale price of $87.33 per 1,000 board feet or a yearly income of approximately $1.2 million. It is far from the $275 per 1,000 board feet used to calculate the $5 million a year potential. Currently, the BIA, as required under 25 U.S.C. §407, allows a yearly cut of approximately 13.8 million board feet of timber a year.

While there may be some flexibility in these figures we feel confident that these figures from 1981 to the present are very close to the average which will be made in the immediate future. This income is comparable to the income generated from the Klamath River fishery.

According to the BIA's own reports some 29,000 fish were taken and sold by commercial fishermen on the Klamath. These fish generated some $944,000 in income. These 29,000 fish represent less than half of the Indian allocation, and some 30,000 additional fish were reserved for subsistance fishing. This we contend is too many. In addition, these 29,000 fish represent only the Chinook, as there is currently no commercial fishing of steelhead, coho and other stocks. While the BIA has chosen to allow private fishermen to retain a sizable percentage of this income the fact remains that it is income generated from a tribal resource.

In summary, because the Interior Department thoughtlessly used an 1891 Executive Order to protect the Klamath River Reservation, it created a technicality under which the BIA and courts are destroying our tribal government today, turning back the clock on federal Indian policy by 100 years. Congress cannot allow this to occur.

I urge enactment of remedial legislation. It will not provide a windfall to the Hoopa Valley Tribe. It will restore to us what was ours prior to the 1891 executive order. It will reaffirm the 1876 Executive Order which protected our homeland. Thank you.

TESTI.WKC
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Inouye urges Indians to solve land conflict on their own

By Eric Brazil
OF THE EXAMINER STAFF

SACRAMENTO — Indian factions battling over the future of the Hoopa Valley Reservation should work out their solution, not turn to Congress or the courts for help, the chairman of the U.S. Senate Select Committee on Indian Affairs says.

"Solutions made in Washington for Indian problems often don't work," Sen. Daniel Inouye, D-Hawaii, told an audience of about 200 Hoopa Valley and Yurok tribal members at a fact-finding hearing Thursday. "This is a problem that affects Indians. I would hope that as you did in the days of old, you get together and resolve this among yourselves."

The hearing was prompted by legislation recently introduced by Rep. Douglas Bosco, D-Occidental, that aims to resolve the 38-year-old dispute over the 145,740-acre Humboldt County reservation — California's largest — by splitting it in two.

Bosco's bill is supported by the Hoopa Valley tribe and opposed by the Yuroks.

The Yuroks have consistently prevailed in court in their effort to claim an equal share of the resources, notably timber, on a 12-mile "square" of the reservation. The bill would sever that "square" from the 45-mile-long reservation extension along the Klamath River.

The litigation has gone on so long that some 400 of the original plaintiffs and several attorneys have died, and the judge has retired. No plaintiff has received a penny so far.

In pleading that the combatants "lower your voices," Inouye said, "All you (Indians) have a common history of deprivation and tragedy" and ought not to be fighting one another over the reservation.

Although he was warmly applauded, Inouye's plea did not budge either side from the foxholes they have dug over the decades.

> ***'All you (Indians) have a common history of deprivation and tragedy' and ought not to be fighting one another***
>
> — Sen. Daniel Inouye

"The problems afflicting this reservation cannot be settled without congressional intervention," said Wilfred Colegrove, chairman of the Hoopa Valley tribe. The courts are the wrong forum, Colegrove said.

It is because of court decisions, based on faulty assumptions and technicalities, that "essential human services have been drastically curtailed and economic development projects have ground to a halt," on the reservation, he said. "Hoopa tribal government is shutting down."

Yurok spokesmen characterized Bosco's bill — on which Inouye has taken no stand — as an outright attempt to end-run a long line of federal court decisions supporting their position. Further, they question the very legitimacy of the Hoopa Valley tribe, which is of mixed tribal extraction.

"Their (Hoopa) blood is as mixed as ours; they have no more right to the square than we do," said Jackie Winter, a part-Yurok, who teaches high school on the reservation.

Dorothy Williams Haberman, a Yurok-Klamath, said "I'm related to at least 600 people who live on the reservation. ... We (opponents of Bosco's bill) own the reservation as much as they do."

Roanne Lyall, a Yurok, said, "The simple fact is that the claim of the Hoopa Valley Business Council ... to exclusive rights in the square has no validity in ethnology, history or laws; and the decision of the Department of the Interior to bestow exclusive rights on the council was unauthorized and illegal."

The House Interior Committee will "mark up" Bosco's bill within the next three weeks, according to his aide, Jason Liles. Committee chairman Rep. Morris Udall, D-Ariz., favors the bill, but both the Justice Department and Bureau of Indian Affairs have reservations about it. "We're negotiating with them now," Liles said.

SF Exam
7/1/85

TESTIMONY OF DALE RISLING
HOOPA VALLEY TRIBE
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

JUNE 30, 1988

My name is Dale Risling and I am a member of the Hoopa Tribal Council. I live on the Square portion of the Hoopa Indian Reservation. Thank you for the opportunity to testify on the problems that have plagued our Reservation for almost 3 decades.

I want to describe the nightmare that 25 years of litigation has caused us as we have struggled to manage our Reservation's resources and address the severe unemployment problem and social service needs on our Reservation.

The original Short decision, which has never been reviewed by the United States Supreme Court, was handed down in 1973. In 1974 the Bureau of Indian Affairs (BIA) started impounding 70% of the timber revenues from the Hoopa Square to protect federal interests, at our expense.

In 1978 the BIA tried to persuade the Indians of the Klamath River Reservation to organize as the Yurok Tribe so they could take responsibility for reservation management. But the BIA permitted all the Short plaintiffs to out vote the small on-reservation community of Klamath River Yurok Indians. The result was not only that the Short plaintiffs overwhelmingly rejected Yurok Tribal organization. They also sued the Interior Department to block future organization of the Yurok Tribe.

You must understand that the Short plaintiffs are not and do not claim to be a tribe. They are widely scattered persons of partial Indian descent whose only community of interest is as co-plaintiffs in a lawsuit. They have no political or governmental structure, either formal or informal, and are not united behind any political leadership.

In 1982, the BIA began to publish notices in newspapers before making any decision affecting resource management on the Reservation. For example, every September the Tribe submits a budget for BIA approval. In response the BIA frequently takes up to nine months to publish notices, review input from individuals around the country, and make its decision on how tribal programs will be funded.

In 1987 the Claims Court helped put Short in its proper perspective by clarifying that Indians of the Reservation cannot complain about the workings of Tribal government. This gave us hope that Tribal government on our Reservation could progress as Congress intends.

Then on April 8 of this year a federal district court judge in San Francisco made a new ruling in a different case, called Puzz v. United States. The district court judge more or less reversed the 1987 claims court ruling I just mentioned. The judge ordered the BIA to take over government of our Reservation.

The BIA filed a Puzz Compliance Plan with the court on June 7. Under the new BIA "government," tribal involvement will be by contract with the BIA only. A six member body will advise the BIA. For example, the BIA decides the "fair share of the approved programs" that can be administered by the Hoopa Valley Tribe. If the BIA approves, we may be allowed to use some of our own unallotted land for tribal development projects--if we lease it at full market value. This federal compliance plan is unworkable and oppressive. All parties to the Puzz case have appealed.

Because the Puzz ruling terminates the Hoopa Tribe's territorial sovereignty, we are now left powerless to cope with the complexities of modern life. For instance, survival of the Hoopa Tribe depends on its ability to protect natural resources, and yet our Tribal Court system now has no jurisdiction to enforce tribal ordinances to protect resources, zone commercial development on the Reservation or regulate outsiders who may trespass or steal tribal timber.

Without territorial sovereignty there is no way to continue tribal jurisdiction under environmental laws such as the Clean Water Act, which implements express federal policy that Indian Tribes have primary authority over environmental and natural resource regulation on their reservations.

The BIA cannot simply step into the shoes of a tribal government. It has no authority to expend tribal monies to run its operations. The BIA's compliance plan in Puzz clearly will run aground on federal statutes that forbid use of tribal funds for BIA expenses. Funds will remain unexpended in the face of urgent needs. For this reason alone, the crisis on our Reservation cannot be resolved without Congressional action.

Let me summarize some of the serious problems that the Puzz ruling has already caused:

1. The Reservation hospital, which served everyone, closed down on June 15 due to the Tribe's inability to provide continued subsidies, staff, and administrative support. The nearest acute care hospital with an emergency room is over 50 miles away across two mountain passes.

2. Invalidation by the Puzz court of a Memorandum of Understanding between the Tribe and the BIA means that the Tribe's Hoopa Forest Industries can no longer successfully participate in reservation timber harvest or provide jobs for up to 170 Reservation residents, including Short plaintiffs.

3. The BIA has refused to issue approvals necessary for the Tribe to proceed with a one million dollar project to build a motel. Bids had already been accepted, but with the Puzz delays, the bids were lost. The project may be lost forever. It would have provided 57 construction jobs and 7 full-time motel service jobs.

4. The BIA has confiscated equipment from the Tribe that is essential to the preparation of this year's timber sales. These sales, which provide most of the Reservation's income, will probably not take place this year.

5. Blaming Puzz, the BIA has breached a settlement agreement in another case, Hoopa Valley Tribe v. Christie. Under the settlement, the BIA agreed to transfer property and buildings to the Hoopa Valley Tribe from what was the BIA's "compound" on the Reservation. It also agreed to sign "self-determination contracts," pursuant to P.L. 93-638, under which the Tribe would assume Reservation road maintenance obligations and management of timber and realty functions on the Reservation. Loss of the agency compound jeopardizes two important social service grants because the Tribe intended to use the buildings for those grant programs. One program would tutor disadvantaged children; the other involves operation of a regional substance abuse project. Loss of the 638 contracts would mean the direct loss of 70 jobs on the Reservation and denies the tribe the increased role in self-government intended by Congress.

6. Puzz has also denied the Hoopa Tribe due process of law by depriving it of funds for attorneys fees, even though the 1987 Short ruling upheld such expenditures. This ruling prevents the Tribe from effectively defending its rights in lawsuits and claims, no matter how ridiculous.

The Hoopa Business Council is the only full-service local governmental organization on the Hoopa Valley Reservation. It has been the major government service provider in the extremely isolated eastern half of Humboldt County. The Council funds a whole series of vital services through its own budget. The Tribe also administers many other projects funded through grants and matching programs. Our programs range from education and day care to community water services, from natural resource protection to natural resource utilization, from police and fire protection to economic development and job creation. Congress has selected us as one of ten model tribal governments for a demonstration project on what tribes can do without the BIA's hinderance. Yet the BIA has told us that Puzz prevents them from funding our budget after June 30. Thus, on July 1 we will be forced to shut down our government, and close the following programs:

(1) a governmental structure that employs over 250 people.

(2) An education and day care system.

(3) A comprehensive natural resources department that includes forestry, fisheries, water rights, and environmental protection divisions. The BIA simply cannot match our proven resource management capability, but in order to comply with Puzz it will have to try.

(4) A planning department that is developing a disaster plan for the Reservation and helps direct reservation economic development.

(5) A public utility district that provides safe drinking water to all residents of the Hoopa square.

The closure of tribal government caused by the Puzz court's interpretation of the 1891 Executive Order and Short helps no one. Ending tribal services on our Reservation threatens to make reservation life impossible. The giant law firms that have been suing us are hoping that people will leave, and the Reservation will be declared surplus and sold.

Since the Hoopa Valley Tribe's citizenship standards are important to its political identity, let me describe them. In 1949, the BIA induced the Tribe to formalize its enrollment standards. The BIA demanded a list of the current members, and suggested use of the censuses of Indians living on the Reservation, or use of some similar official government document as a basis. This was the approach commonly used on other reservations whose goverment structure was formalized and westernized around the time of the Indian Reorganization Act of 1934.

We chose to start with the list of persons holding individual pieces of land (allotments) on the Square. They made up about 90 percent of the list from that basic source, because those were the poeple who were part of the tribal community on the Square. Of course, some of the Indians allotted land on the Square were ones who had been admitted to the Tribe under familiar anthropological affiliation terms--marriages, adoptions, aboriginal territory, but most allottees there were from long family lines of Hoopa-language speakers.

The base roll of 1949 was enlarged by about two dozen people who were not allottees or children of allottees, to accommodate long-term resident Indians who were plainly part of the tribal community. By definition, those placed on the tribal rolls were deemed to be Hoopas, Hoopa citizens, and under the Tribal Constitution, all future members would have to be both descendants of that set and 1/4 degree Indian or more. Citizenship limitations like this are common among Indian nations, and among foreign nations as well. Immigration policy and citizenship are inherent rights of governments, and the U.S. Supreme Court has very plainly and very often said that Indian tribes retain the rights to set and live by their own membership standards.

Our tribe and our reservation should not be controlled by technicalities and federal mistakes dating back to 1864 and 1891. The legislation that has been introduced in the House is a realistic and necessary solution to these problems because it will restore the sovereignty of tribes over their homelands. And it will not be a fifth amendment "taking" of anybody's interests because it is also a fair solution: no reservation lands will be sold; instead lands will be restored to the Yurok Reservation. No one will have to relocate. As explained in our written materials, the future income from the resources of the Hoopa and Yurok Reservations is very comparable. The Yurok income will mostly come from the abundant Klamath River fishery; Hoopa income will come from some fish and some timber. The Klamath fishery clearly has a far greater value than Hoopa fish and timber combined.

If Congress wants to prevent a disaster for tribal government and Indian people, it must move forward with legislation that will ensure tribal self-determination and solve the underlying problems which have resulted in almost 30 years of litigation. Legislation can provide some hope for the Hoopa and Yurok Tribes; without it, we will only be condemned to decades more of endless litigation. Thank You.

Testimony of Mervin George
Hoopa Valley Tribe
Before the
Senate Select Committee on Indian Affairs

June 30, 1988

My name is Mervin George and I am the spiritual leader of the Hoopa Valley Tribe and the keeper of our sacred ceremonial dances which include the sacred white deer skin dance and the jump dance. Thank you for allowing me to testify in support of H.R. 4469.

The Hoopa people known as the Natinook-wa, came into existence in Hoopa Valley, on the Trinity River. Carbon dating shows that our ceremonial fire pits have been used for over 10,000 years. This is the center of our universe. The Hoopa Valley Tribe existed as a system of villages along the Trinity River. Our ceremonial dances follow a specific path from place to place; these dances are special to Hoopa, although we do invite other Indians to participate as our guests in many of these dances. The Hoopa language is an Athapascan language, very distinct from the language groups of neighboring Indian tribes.

The Klamath River Yuroks are another traditional Indian tribe who have lived along the lower stretches of the Klamath River and the Pacific coast nearby since before the whites came. They live in Redwood timber country, not Douglas fir country like our own. Although not very far from our sacred Hoopa Valley by air miles, the Klamath River country is geographically very distinct from our own. It is separated from us by the rugged gorge of the Trinity River before it joins the Klamath, and by the narrow Klamath River gorge itself.

The Yurok people have a different style of dances. They use sacred high country that is different than our own. And they are from an Algonkian language group. Their tribe always brings its people home for burial to their traditional areas on the Klamath, and we bury our people in Hoopa Valley. The Hoopa people know who they are and the Yurok people know who they are. I am sad to find some Indians who do not know to what tribe they belong.

In our written submission are studies by Dr. Verne Ray, a noted anthropologist, concerning the distinction between the Hoopa, Yurok, and other Indian groups in northwestern California. I was happy to learn that even the Puzz court, in its recent disastrous order, recognized that our Tribe had never been consolidated with the Yurok Tribe and that such consolidation would be illegal. Please pass this bill to make it possible for the Yurok Tribe to organize its affairs and for their Tribe and ours to co-exist peacefully on separate reservations. Thank you.

STATEMENT OF
NELL JESSUP NEWTON
IN OPPOSITION TO PROPOSED LEGISLATIVE PLANS TO RESOLVE DISPUTES ON THE HOOPA VALLEY RESERVATION BY NONCONSENSUAL PARTITIONING OF THE RESERVATION

Hearing before the Senate
Committee on Indian Affairs

Sacramento, California
June 30, 1988

My name is Nell Jessup Newton. I am an associate professor of law at the Columbus School of Law at the Catholic University of America. I have taught and written in the field of Indian law since 1977. I have also taught constitutional law since 1980. My research and writing has focused particularly on questions regarding confiscation and mismanagement of Indian property, Newton, *At the Whim of the Sovereign: Aboriginal Title Reconsidered*, 31 Hastings L.J. 1215 (1980); Newton, *The Judicial Role in Fifth Amendment Takings of Indian Land: An Analysis of the Sioux Nation Rule*, 61 Oregon L. Rev. 245 (1982); Newton, *Enforcing the Federal-Indian Trust Relationship After Mitchell*, 31 Catholic Univ. L. Rev. 635 (1982); and, the limits of federal plenary power over Indians: Newton, *Federal Power over Indians: Its Sources, Scope, and Limitations*, 132 U. Penn. L. Rev. 195 (1984).

At the request of counsel representing some of the Indians on the extension, I am submitting this memorandum. The views expressed represent my own, however, and not those of my employers, the Catholic University of America.

Congressional power over Indians has too often been invoked to impose legislative solutions to Indian problems against the wishes of the Indian people themselves. On June 21, 1988, the Committee on Interior and Insular Affairs of the House held a hearing on a bill, H.R. 4469, designed to partition the Hoopa Valley Reservation between two groups of Indians -- the Hoopa Valley tribe and the Yurok tribe. It is my understanding that the Senate's hearing in Sacramento on June 30 represents a preliminary inquiry into possible solutions to the property and political disputes on the Hoopa Valley Reservation.

Because the House bill is the only one introduced to date, I will refer to that bill to argue that any bill modeled on H.R. 4469 should be rejected and that any other solution that is not based on the consensus of the affected people also be rejected.

The history of the Hoopa Valley Reservation dispute has been ably told elsewhere, in the numerous opinions in the Jessie Short case: *Short v. United States*, 12 Cl. Ct. 36 (1987) (*Short IV*); *Short v. United States*, 719 F.2d 1133 (Fed. Cir. 1983), *cert. denied*, 467 U.S. 1266 (1984) (*Short III*); *Short v. United States*, 661 F.2d 150 (Ct. Cl. 1981, *cert. denied*, 455 U.S. 1034 (1982) (*Short II*; *Short v. United States*, 202 Ct. Cl. 870 (1973) (*Short I*). What follows is merely a brief outline of this history.

Indians in California belonged to some 500 separate and distinct bands who originally claimed aboriginal title to some 75,000,000 acres of land in the state. After statehood, Congress authorized commissioners to negotiate treaties with these diverse bands of Indians to obtain relinquishment of their land claims in return for the promise of reservations and food, clothing, tools, and supplies. The eighteen treaties so negotiated provided for more than 8,000,000 acres of reservations to be established as the permanent homes of the signatory tribes. The Treaty of 1851 with the Taches, 4 Kappler 1092, art. 3, contains this typical provision:

> Art. 3. It is agreed between the parties that [a defined district] shall be set apart and forever held for the sole use and occupancy of said tribes of Indians; in consideration of which . . . the said tribes hereby forever quit claim to the government of the United States to any and all lands to which they or either of them may ever have had any claim or title.

Although the California Indians kept their part of the bargain, by moving to the locations specified as reservations in the treaties, political pressure by the California state delegation resulted in the Senate refusing to ratify the very treaties the Senate had earlier authorized the president to make.[1] Congress thus embarked on a much more modest reservation system.Several acts of Congress authorized the president to create military reservations to collect the Indians. Act of Mar. 3, 1853,

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[1] For more detailed accounts, see Goodrich, *The Legal Status of the California Indians*, 14 Calif. L. Rev. 6 (1914). After securing a special jurisdictional statute, the Caliornia Attorney General Earl Warren presented the California Indians' claims to the Court of Claims, eventually settling the case for $5,000,000. *See Indians of California v. United States*, 98 Ct. Cl. 583 (1942) (statutory liability established).

10 Stat. 238; Act of Mar. 3, 1855, 10 Stat. 699. Pursuant to this legislation, three Executive order reservations were created, including the Klamath River Reservation established for Indians living along the Klamath river in 1855. 1 C. Kappler, *Indian Affairs: Laws & Treaties* 817 (1904).

To provide for removal of the remaining California Indians, Congress enacted "An Act for the Better Organization of Indian Affairs in California," 13 Stat. 39. The law created one superintendent for the entire state (section 1), provided for the establishment of 4 reservations within the state (section 2), and the sale of all reservation land not needed for this purpose.(section 3). Section 2 of the act is the source of the present dispute. It states, in pertinent part:

> That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land . . . to be retained by the United States for the purpose of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state . . . Provided, that at least one of said tracts shall be located in what has heretofore been known as the northern district: . . . And provided, further, that said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be

> provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included the same may be enlarged to such an extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended.

Pursuant to this law, President Grant issued an Executive order on June 23, 1876 precisely defining the boundaries of the Hoopa Valley Reservation, declaring the reservation "be, and hereby is, withdrawn from public sale and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864. 1 C. Kappler, Indian Affairs: Laws & Treaties 815 (1904). This original reservation is know as "the Square."

Note that although the reservation was called the Hoopa Valley Reservation, neither the 1864 statute nor the Executive order ever specified any particular tribe or group of Indians by name. The congressional policy was to collect Indians from the many different tribal groups in California on a few large reservations away from the general population. As trial Judge Schwartz stated in *Short I*, 486 F.2d 561, 564 (Ct. Cl. 1973): "in the north, in the area of the Hoopas and the Yuroks, almost every river and creek had its own tribe." Thus, the legislative scheme mandated the creation of reservations to accommodate "the Indians of said state," but delegated to the

President discretion to determine which tribes should be placed on each reservation.

From the beginning the Hoopa Valley Reservation was occupied by members of other tribes as well as Hoopas, including some Yuroks. Members of still other tribes soon joined them, including Klamaths, Redwoods, Humboldts, Hoonsoltons, Miscolts, and Saiaz, a fact which is amply documented by references in the Annual Reports of the Commissioners of Indian Affairs between 1876 and 1891, when the extension was added. See *Short I*, 486 F.2d 561, 565-66 (Ct. Cl. 1973).

This extension, too, was added by Executive order, dated October 16, 1891, 1 C. Kappler, Indian Affairs: Laws & Treaties 815 (1904). The order added a 1 mile wide strip extending 45 miles to the ocean. This strip included the previously established Klamath River Reservation. Thus, at that point the reservation resembled "a square skillet with an extraordinary long handle." *Short I*, at 562.

As the United States Supreme Court said in *Mattz v. Arnett*, 412 U.S. 481, 493-94 (1973):

> The reason for incorporating the Klamath River Reservation in the Hoopa Valley Reservation is apparent. The 1864 Act had authorized the President to "set apart" no more than four tracts for Indian reservations in California. By 1876, and certainly by 1891, four reservations already had been so set apart. . . . Thus recognition of a fifth reservation along the Klamath River was not permissible under the 1864 Act. Accordingly the President turned to his authority under the Act to expand an existing,

> cognized reservation. Again, the 1891 Executive order, issued pursuant to the 1864 law, did not specify a particular tribe as beneficiary of the addition or the reservation, referring instead to the reservation as "a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized" by the 1864 law.

The Square is heavily timbered. In 1950 the Indians of the Square, including enthnological members of the Hoopa Valley tribe as well as other tribes who inhabited the square, organized as the Hoopa Valley Tribe. In 1957, the Secretary of the Interior began distributing revenues from that timber solely to the members of that tribe. In 1963, 3300 excluded Indians primarily living on the extension, brought suit seeking their share in the per capita distribution. In 1973, the Court of Claims held that all the Indians of the Reservation were equally entitled to share in any per capita distributions made from revenues derived from timber anywhere on the reservation. (*Short I*).

Subsequent proceedings to determine who were Indians of the reservation entitled to share and the extent of liability continued for 14 years. According to Judge Margolis of the United States Claims Court: "This case, filed in the United States Court of Claims on March 27, 1963, has outlasted some 400 now deceased plaintiffs, the original trial judge, several deceased attorneys, and even the court in which it was originally filed." *Short IV*, 12 Cl. Ct. 36, 38 (1987).

Some $60 million remained in the Treasury in 1987 waiting final determination of who are Indians of the reservation.

The *Short* case only resolved a narrow question however -- that of who was entitled to share in whatever per capita distributions were made. Decisions regarding how reservation resources were to be managed, including to what extent per capita distributions should be made, were made by the federal government and the Hoopa Valley Tribe through its business council. Thus, decisions regarding the use of revenues derived from unallotted reservation land that was not distributed per capita, some 70% of the revenues, were made that favored the Hoopa Valley tribe and its business council and not the excluded group. For example, 25 U.S.C. § 407 (1982) gives the secretary discretion to disburse timber revenues from unallotted land. The Secretary continued to use this money to support the activities of the Hoopa Valley tribe including money to fund services that the excluded group, not being members, were ineligible to receive. As a result, individual Indians of the reservation sued the Hoopa Business Council and the United States government arguing they were entitled to a voice in administering the reservation. In *Puzz v. United States*, Civ. No. 80-2908 (April 8, 1988), the district court ordered the federal government to exercise supervisory power over reservation administration, resource management, and spending of reservation funds, to ensure that "all Indians of the reservation receive the use and benefit of the reservation on an equal basis." slip opin. at 23. The court further ordered the government to devisea plan to ensure that nonmembers are included in decisionmaking. As an example of the government's discrimination in favor of the Hoopa Valley tribe, the court noted that the government had permitted reservation funds to be used to defend that very litigation and ordered this practice stopped.

Only two weeks after the decision in *Puzz*, H.R. 4469 was introduced. It is apparent that the bill proposed in the House was designed to undercut the results in the *Puzz* case.

The bill introduced in the House contains a remarkably simplistic and completely unfair resolution to the dispute. Simply put, the bill would sever the Square and the extension into two reservations. The members of the Hoopa Valley tribe will be the beneficial owners of the Square. The members of the Yurok tribe will become the beneficial owners of the Extension. After the *Short* plaintiffs are paid their share of the per capita payments, the bill provides that the rest of the escrow fund be divided 50-50 between the two tribes.

The bill contains no provision for just compensation in the constitutional sense. It provides for some transfer of money to the Yurok Tribe, however. It directs the transfer of any National Forest lands within the boundaries of the proposed Yurok Reservation to the reservation and it authorizes the appropriation of $20 million to permit the Secretary "to seek to purchase land along the Klamath River." Finally, the bill provides that any successful suit against the United States for just compensation by either tribe will entitle the United

States to "a judgment for reimbursement from the other tribe's future income."

The bill as proposed favors the members of the Hoopa Valley tribe, a minority of the Indians of the reservation, over the nonmembers, who make up a majority of the Indians of the reservation. The Hoopa Valley tribe members comprise 30% of the tribal reservation population, yet the timber revenues from the Square account for 70% of reservation revenues. Dividing the *Short* escrow fund 50-50 also favors the Hoopas, because 30% of the population would be receiving 50% of the money.

Moreover the two groups created by the statute are artificial. The Hoopa Valley tribe itself was created artificially by Indians of various ethnological background living on the Square at the time of organization under the IRA. As stated earlier, some 15 ethnological groups are represented in the lineage of reservation members (Many Extension residents, primarily Yuroks, for instance, are related to persons on the Square). Although the bill provides for organization of a Yurok Tribe under the Indian Reorginization Act, will all non-Hoopas be eligible to vote or will some quantum of Yurok blood be required? If the latter, the bill could work to disenfranchise these people.

Finally, the bill is bad policy and bad law. It is bad policy because it subverts the 20 year struggle of the excluded Indians to achieve peacefully through the courts a remedy to great injustice. After careful consideration of the entire history of the United States government's dealings with the Indians on the Hoopa Valley Reservation, the Court of Claims has determined that all the Indians of the reservation have consistently been intended by Congress as the beneficiaries of reservation resources. Thus, the excluded reservation residents have won the right to share in the per capita payments. Moreover, the federal district court in California has concluded that the present Hoopa Valley Business Council, which does not represent the interests of the nonmembers of the Hoopa tribe, functions illegally when it makes decisions affecting reservation resources. In the future, a truly majoritarian system of government must be set up to protect the interests of all the people of the reservation. Despite these court victories, in fact because of them, the House bill proposes to divide the reservation, giving the greatest wealth to the Hoopa Tribe.[2] "The message thus sent to all Indian peoples is that they cannot trust the "courts of the conqueror," because judicial victories will be overturned by a vengeful Congress. It echoes the plenary power era, now theoretically discredited, in which Congress claimed the right to treat Indian money and land as public money and land. It is bad law, because in my opinion it violates the fifth amendment takings clause. The rest of this statement will be directed to an analysis of the constitutionality of any bill that partitions the Hoopa Valley Reservation without the consent of all affected individuals.

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[2] The bill does preserve the victory of the *Short* plaintiffs to their share of the per capita payments made in the past. The rest of the huge escrow amount is to be divided 50-50 between the two tribes, however. More important, future income from the valuable timber reserves on the Square will inure solely to the Hoopa Tribe.

The Fifth Amendment Takings Clause

The fifth amendment takings clause protects a cardinal value. "The Fifth Amendment's guarantee . . . was designed to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public at large." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). When a regulation of land leaves it in its present ownership, but drastically affects the value or use of the property, the determination of whether a taking has occurred requires a balancing of the detrimental economic effect of the regulation against the public good to be furthered. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). Predicting whether such a "regulatory taking" exists can be difficult in a given case. *See, e.g., First English Evangelical Lutheran Church v. County of Los Angeles*, 107 S. Ct. 2378 (1987); *Nollan v. California Coastal Comm'n*, 107 S. Ct. 3141 (1987). In a case like the present, however, determining whether a taking exists is a straightforward inquiry, because the proposed government action would effect a permanent physical occupation of property presently owned by all Indians of the reservation, giving a portion claimed by all of them to one favored group. Such actions create a per se taking. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426, 434-35 (1982).

These fifth amendment takings clause principles have not been applied neutrally to cases involving Indian land, however. Most notable is *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955), in which the Supreme Court held that aboriginal Indian title is not "property" within the meaning of the takings clause. The rule of *Tee-Hit-Ton* is that the takings clause only applies to Indian property that has been "recognized . . . by action authorized by Congress." *Id.* at 288-89. Moreover, Executive order reservations created by the president on his own authority out of public domain lands are not recognized, absent further congressional action, according to two cases decided in the 1940's, *Sioux Tribe v. United States*, 316 U.S. 317 (1942); *Confederated Bands of Ute Indians v. United States*, 330 U.S. 169 (1947). Finally, even Indian property that has been so recognized by Congress, is subject to a further analytical hurdle before compensation can be granted for a physical invasion. According to *United States v. Sioux Nation*, 448 U.S. 371 (1980), the government may be insulated from liability if the governmental act resulting in a loss of property arose from an exercise of guardianship rather than exercise of sovereign power. In other words, if a reviewing court determines the government acted as a guardian of Indian land, transmuting the land into money, even against the wishes of the tribe, a taking has not occurred. In *Sioux Nation*, the Supreme Court held that if the government "fairly (or in good faith) attempts to provide [its] ward with property of equivalent value," a reviewing court should declare the governmental action to be that of a guardian. *Id.*, at 416. Consequently the affected tribe would only have a claim for breach of trust and not for a fifth amendment taking.

My research into Indian property law convinces me that any nonconsensual partition of the Hoopa Valley Reservation would be a fifth amendment taking, because the Hoopa Valley Reservation has been recognized by Congress in the *Tee-Hit-Ton* sense. Thus, it is property within the meaning of the fifth amendment and the cases denying compensation for a taking of unrecognized Executive order land do not apply. Second, even if the reservation has not been recognized, I believe the Court is ready to reexamine the broad language in *Sioux Tribe* and *Confederated Utes* in light of its greater sensitivity to minority rights since those cases were decided, the expansion of the concept of property for purposes of the due process clause, and its recent application of general fifth amendment principles, instead of specialized "Indian" fifth amendment principles in *Hodel v. Irving*, 107 S. Ct. 1076 (1987), decided just this past term. If it does decide to reconsider *Tee-Hit-Ton*, a case involving an Executive order reservation which has been home to a group of Indians for the last 100 years will present an appealing vehicle to distinguish them, especially since there are no recent precedential hurdles to such a narrowing interpretation and both cases are very narrow decisions, easily confined to their facts.

Congress Has Recognized the Hoopa Valley Reservation

In *Tee-Hit-Ton Indians v. United States*, the Supreme Court held that neither the Organic Act, 23 Stat. 24 or the Act of June 6, 1900, 31 Stat. 321, providing for a civil government for the State, recognized the Alaskan natives' ownership right to land they inhabited in Alaska. Instead, the Court interpreted the relevant statutes as designed merely to preserve the status quo until Congress could decide what should be done with the Natives. *Id.* at 278. Recognition required, according to the Court, evidence that "Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently." *Id.* at 277. Later in the opinion, the Court clarified to some extent the requirement for recognition by stating: "There is no particular form for congressional recognition of Indian right of permanent occupancy. It may be established in a variety of ways but there must be the definite intention by congressional action or authority to accord legal rights." *Id.* at 278-79.

During the late eighteenth and early nineteenth century, several presidents removed land from the public domain for various purposes (including some 99 establishing or enlarging

Indian reservations) by issuing Executive orders. Many of these withdrawals were made without any statutory authorization. This practice was attacked as interfering with congressional prerogatives under the property clause, granting Congress the exclusive right to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, sec. 3. The Supreme Court upheld the president's power to make withdrawals without an express statutory delegation on the theory that the prevalence of the practice and the failure of congress to object demonstrated congressional acquiescence and thus an implied delegation. *See, e.g., Mason v. United States*, 260 U.S. 545 (1923). In 1919, Congress decided that the practice had been abused, and explicitly forbade the executive to withdraw any further land. Act of June 30, 1919, ch. 4, § 27, 41 Stat. 34 (current version codified at 43 U.S.C. § 150 (1982). The 1919 act did not in anyway remove authority for the earlier reservations, however.

Sioux Tribe and *Confederated Utes, supra*, involved unauthorized presidential removals of public domain to enlarge temporarily existing Indian reservations. It was the absence of any explicit congressional authorization that caused the Supreme Court to declare that the Executive orders did not create any compensable right.

In contrast, the 1864 statute directing the president to establish four reservations in California provided explicit authorization for the Executive orders of 1876 and 1891, a fact the Court noted in its extensive treatment of Executive order reservations in *United States v. Midwest Oil*, 236 U.S. 466, 469 (citing *Donnelly v. United States*, 228 U.S. 243 (1913), a case upholding presidential power to add the Extension to the Hoopa Valley Reservation).

In my opinion, the 1864 act granted the Indians of the reservations to be established a compensable property interest. The question whether a reservation has been recognized is a matter of ascertaining congressional intent. Standard principles of statutory construction do not apply to statutes enacted to benefit Indian tribes, however. These statutes must be construed liberally in favor of the Indians. *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). The 1864 statute directed the president to exercise his discretion in the "best interests of the Indians to be provided for," thus indicating congressional intent to benefit the California Indians. In addition, the 1864 statute evidences congressional intent that the land be used "for the purposes of Indian reservations." Moreover, the legislative history of the 1864 statute indicates congressional intent to move the California Indians onto the four reservations which they could regard as their home to compensate them for the loss of their land through the unratified treaties and to clear the way for the further settlement of California. Finally, the statute must be read in conjunction with the general policy regarding Indians at the time it was enacted. In 1864 Congress regarded Indian reservations as permanent homes, for Indian policy prevailing from 1850 to 1887 was to relocate (and confine) Indian tribes on permanent reservations. It was not until the Dawes Act in 1887 (24 Stat. 388) that congressional policy favored breaking up the reservations.

Comparable treaty language has been held to recognize title. For instance the phrase "held and regarded as an Indian reservation" has been construed to grant a vested property right. *United States v. Klamath & Moadoc Tribes*, 304 U.S. 119 (1938). *See also Menominee Tribe v. United States*, 391 U.S. 404 (1968) ("held as Indian lands are held.") *See generally*, Cohen's **Handbook of Federal Indian Law** 475-76 (R. Strickland & C. Wilkinson eds. 1982).

Not all treaties creating reservations have been held to recognize title, of course, but cases in which the court of claims has held language insufficient to create vested rights are easily distinguishable. For instance, clear treaty language stating that the reservation boundaries could be diminished at the discretion of the president, has been held insufficient. *See, e.g., United States v. Kiowa, Comanche & Apache Tribes*, 479 F.2d 1369 (Ct. Cl. 1973), *cert. denied sub nom. Wichita Indian Tribe v. United States*, 416 U.S. 936 (1974). No such language of divestment is present in either the authorizing statute or the Executive order in this case. The Court of Claims has also held that where contemporary history clearly indicated a congressional intent to deprive the tribe of the land despite language in the treaty, *Strong v. United States*, 518 F.2d 556 (Ct. Cl. 1975), such clear congressional intent could outweigh treaty language apparently granting the land to the tribe. Again, the legislative history in this case is to the contrary.

In sum, I believe the 1864 statute authorized the president to create a property interest in whatever tribes were settled on the reservation. The 1876 Executive order setting aside the reservation and the 1891 Executive order extending its boundaries to include the Extension were thus fully authorized and created vested property rights. In fact, in 1973, the Supreme Court referred to the entire reservation as recognized explaining the Extension was made under the president's "authority under the Act to expand an existing, recognized reservation." *Mattz v. Arnett*, 412 U.S. 481, 494 (1973) (emphasis added) (holding the opening of the old Klamath River Reservation to allotment had not disestablished the boundaries of the reservation). This conclusion is inescapable when one considers activities occurring after the Hoopa Valley reservation was established. The Supreme Court has sanctioned the practice of reading federal statutes expansively in light of both events existing at the time the statute was enacted and also events occurring since the enactment of the statute. *See, e.g., Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977); *see also Solem v. Bartlett*, 465 U.S. 463 (1984). Congressional appropriations, which began in 1869 before the Hoopa Valley Reservation had been formally established by Executive order, 16 Stat. 37, and other actions taken during the last 100 years can be interpreted as recognizing the Hoopa Valley Reservation as the permanent home of the tribes settled there. *See Mattz v. Arnett*, 412 U.S. 481, 505 (1973).

Congressional Recognition of All Executive Order Reservations

A later statute can also create a property interest in a particular reservation, *see, e.g., Fort Berthold Reservation v. United States*, 390 F.2d 686 (Ct. Cl. 1968). In addition, other statutes may be interpreted as creating compensable property interests in all Executive order reservations. It has been argued, for instance, that the Mineral Leasing Act of 1927, Act of Mar. 3, 1927, ch. 299, 44 Stat. 1347, codified at 25 U.S.C. §§ 398a-398e (1982) indicated a congressional intent to recognize title in Executive order reservations. Note, *Tribal Property Interests in Executive order Reservations: A Compensable Indian Right*, 69 Yale L. J. 627 631-39 (1960). Although this position has been rejected by a federal district court in Arizona, *Sekaquaptewa v. MacDonald*, 448 F. Supp. 1183, 1192-93 (D. Ariz. 1978), *aff'd in part, rev'd in part*, 619 F.2d 801 (9th Cir. 1980), that court held that the land at issue (9 million acres on the Navajo Reservation) had been recognized by a specific federal statute, 48 Stat. 960.

Moreover, the Court in *Sioux Tribe* considered an argument that section 1 of the General Allotment Act of 1887, ch. 119, 24 Stat. 389, codified as amended at 25 U.S.C. § 331 (1982), demonstrated a congressional intent to treat Executive order lands as recognized Indian title by expressly authorizing the allotment in severalty to tribal members of land located on reservations "created for [Indian] use by treaty stipulations, Act of Congress, or Executive order . . . ." The Court's reasons for rejecting the argument were very narrow, however. The Court stated:

> "We think that the inclusion of Executive order reservations meant no more than that Congress was willing that the lands within them should be allotted to individual Indians according to the procedure outlined. Since the lands involved in the case before us were never allotted -- indeed, the Executive orders of 1879 and 1884 terminated the reservation even before the Allotment Act was passed, -- we think the Act has no bearing upon the issue presented."

Shoshone Tribe at 330.

The Court's decision thus leaves open the argument that reservations allotted subsequent to the General Allotment Act, like the Hoopa Valley reservation, were recognized by that statute.

These two statutes are illustrative and not exhaustive. Since Congress has not followed the practice of taking Executive order reservations without compensation, it has not been necessary to make the kind of intensive search of Title 25 that the enactment of a bill partitioning the Hoopa Valley reservation would, no doubt, engender. Other statutes, read liberally, might also be held to have recognized title in all Executive order reservations.

The Continuing Validity of Sioux Tribe and Confederated Utes.

Even if a court concluded that no congressional recognition of the right to occupy the reservation permanently existed, I do not believe the conclusion that Executive order title is noncompensable is inevitable. To begin with, a careful examination of both cases reveals that the decisions were very narrow. In neither was there any congressional authorization. in both the Executive orders enlarged existing reservations created by and protected as property under treaties. In both, the existing reservations were extensive to begin with and the Executive orders were not in effect long enough to create any reasonable expectations. In *Sioux Tribe*, the Executive order additions were designed to serve as a buffer for liquor traffic. The Executive order itself made clear the addition was temporary: "This order of reservation to continue during the pleasure of the President." 1 C. Kappler, Indian Affairs: Laws & Treaties 865 (1904). Only four years later this purpose had been met and the land was restored to the public domain. In *Confederated Utes*, the lands had been added to the reservation in 1875 to resolve a boundary dispute arising under an 1868 treaty. The Executive order did not use language reserving discretion to the President to revoke the order. 1 C. Kappler, Indian Affairs: Laws &Treaties 834 (1904). The lands were restored to the public domain only 7 years later as punishment for the so-called "Meeker massacre," perpetrated by the Utes. In contrast, the Executive orders creating the Hoopa Valley Reservation were created as part of the general quid pro quo by which the United States gained clear title to California and got the Indians of that state to remove themselves peacefully to permanent settlements where they have remained for almost 100 years.

Both federal Indian law and constitutional jurisprudence have changed considerably since the 1940's when *Sioux Tribe* and *Confederated Utes* were decided, and even since 1955 when *Tee-Hit-Ton* was decided. Specifically, concepts of what constitutes property have been broadened considerably since then. For example, a legitimate claim of entitlement can suffice to create a property interest under the due process clause. *Board of Regents v. Roth*, 408 U.S. 564 (1972). As the Court explained in *Roth*: "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. 408 U.S. at 577. This legitimate claim of entitlement may be grounded in a statute but also in an understanding created by the facts of a given situation. For instance, a professor at a state university may still have a property interest in his or her job if he or she can prove that the university had created a de facto tenure system by renewing all teachers' contracts every year. *Perry v. Sindermann*, 408 U.S. 593 (1972). Having inhabited the Hoopa Valley Reservation for almost 100 years with no threat of congressional expulsion, the Indians of the reservation may claim a government-sponsored legitimate claim of entitlement. Recent scholarship has stressed that the definition of property for takings clause purposes must be evaluated in light of "the broader definition of property interests now employed in the law of procedural due process." L. Tribe, American Constitutional Law 590-92, n.11 (2d ed. 1988).

In addition to broadening the concept of property in due process cases, the Supreme Court has also shown a far greater solicitude to the property rights of reservation Indians and less deference to congressional reordering of property rights on a reservation. In *Hodel v. Irving*, 107 S. Ct. 2076 (1987), the Supreme Court invalidated a provision of the Indian Lands Consolidation Act, stating that even though the legislative purpose -- remedying the fractionated heirship problem -- was laudable, the method -- escheating small estates to the tribe -- violated the classic fifth amendment principle that the few should not be sacrificed to benefit the many. A noteworthy aspect of this opinion was that the court rejected an argument that the right to devise property was not vested. Admittedly, the property at issue was presumably recognized title because the allotments were created on the Sioux Reservation, which in turn had been recognized by treaty. Nevertheless, the Court nowhere mentioned the character of the title at issue or referred to the *Tee-Hit-Ton* principle.

As to the *Tee-Hit-Ton* principle, I have argued elsewhere that an opinion based on ethnocentric [3] and out-moded [4] notions regarding Indian land tenure should be overruled, or at least limited in effect to land not presently occupied by an Indian tribe. Congress should not perpetuate this unjust distinction between recognized and unrecognized title by relying on the case to immunize it from liability.

The Proposal is a Taking Without Just Compensation

Once the reservation is seen as property protected by the fifth amendment takings clause, the conclusion that the proposed partition is a taking in the constitutional sense is easy to support. As Professor Tribe states in his treatise:

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[3] Although written during the same year as *Brown v. Board of Education*, *Tee-Hit-Ton* refers to Indians as "savages" whose aboriginal land claims could be characterized as "permission from the Whites to occupy."]

[4] The case was written at the height of the Termination Era, now repudiated by Congress.

> Before the taking, an object or a piece of land belonged to X, who could use it in a large number of ways and who enjoyed legal protection in preventing others from doing things to it without X's permission. After the taking, X's relationship to the object or the land was fundamentally transformed; he could no longer use it at all, and other people could invoke legal arguments and mechanisms to keep him away from it exactly as he had been able to invoke such arguments and mechanisms before the taking had occurred.Tribe, **American Constitutional Law** 592 (2d ed. 1988).

The proposed partition is a textbook example of a taking. Before the partition all the Indians of the reservation had communal property interest in the reservation. Moreover, all individual Indians of the reservation had an individual property interest in the per capita payments from timber revenues. ***See Webb's Fabulous Pharmacies, Inc. v. Beckwith***, 449 U.S. 155 (1980) (state's taking of interest of funds deposited in court during interpleader proceeding held a taking of property requiring just compensation).[5]

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[5] In *Short IV*, 12 Cl. Ct. 36, 43 (1987), the Claims court did not reach the question whether interest was due on the individual claims to the per capita payment because their exclusion from payment was a fifth amendment taking. Because a statute specifically provided for interest in such funds, the court avoided reaching the question.

After partition, both property interests would be lost.

The partition plan does not attempt to provide property of equivalent value to the Indians of the reservation losing their land. Thus, under the rule of *Sioux Nation, supra*, the action is an "act of confiscation and not the exercise of guardianship." This case is distinguishable from both *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649 (1976) and *United States v. Jim*, 409 U.S. 80 (1972), two cases involving individual claims to tribal property. First, in each case the Court held that the statutes at issue had not granted vested property rights to individual Indians. In *Hollowbreast* the Court held that the statutory language had only granted an expectancy and not a vested future interest, because the statute at issue evidenced congressional intent to retain control over the subsurface estate of the allotted lands for the benefit of the entire tribe. In *Jim* the Court upheld a statute expanding the class of beneficiaries under an earlier statute providing for education benefits from those residing on the Aneth extension to all Navajo Indians in the county. Second, in both cases the affected individuals retained their communal ownership in valuable tribal resources. In contrast, the proposed bill would take both vested individual property rights to future percapita payments as well as vested communal property rights.

Moreover, the provisions in the bill for addition of some land to the proposed Yurok reservation cannot be regarded as just compensation. In the *Fort Berthold* case, *supra*, the court of claims rejected an argument that a provision for partial payment in the statute taking reservation land somehow insulated the government from liability under the fifth amendment takings clause. The court stated: "If Congress pays the Indians a nominal amount, or . . . an amount arbitrarily arrived at with no effort to ascertain if it corresponds to the true market value of the land, then it cannot be said that Congress is merely authorizing the conversion of one form of tribal property to another." 390 F.2d at 695.

Furthermore, a provision designed to escape liability by forcing the benefited tribe to indemnify the government if the deprived tribe successfully presses a fifth amendment takings clause claim, in turn violates the principles of that clause. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 240 (1984) did involve a statutory scheme providing for state condemnation of property to be sold to long-term lessees, with payment for the property for the most part provided by the lessees themselves. The legislative scheme in *Hawaii Housing Authority* is radically different from the scheme proposed in H.R. 4469, however. The Hawaii statute left the tenant free to choose whether to buy the property; the proposed bill by legislative fiat requires reimbursement by the benefited tribe out of future profits. Forcing an unwilling private party to pay compensation would, perversely, result in a second taking.

28 U.S.C. § 1505 Creates a Statutory Claim for Compensation.

The Court of Claims has stated that the Indian Claims Commission Act created statutory claims for compensation for taking of Executive order land. *Three Affiliated Tribes of the Fort Berthold Reservation v. United States*, 390 F.2d 686 (Ct. Cl. 1968). Although a federal law had subsequently recognized title to some of the Executive order land involved in the case, another portion of the land was added after the statute. Thus, the court held that the later Executive order did not create recognized title. Thus, the court was forced to reach the issue of the compensability of Executive order title. Although the case itself involved claims accruing before 1946, the court of claims stated that the same argument would hold for claims accruing after 1946, presented in the Court of Claims under 28 U.S.C. § 1505. The court based its conclusion on the plain meaning of the Indian Claims Commission Act. Section 2 of that statute (60 Stat. 1050) gave the Indian Claims Commission jurisdiction over claims "arising under the Constitution, laws or treaties of the United States, or Executive orders of the President." More important, section 24 of the Indian Claims Commission Act, codified at 28 U.S.C. § 1505 (1982) contains similar language granting to the Court of Claims jurisdiction over claims arising under the "Constitution, laws or treaties of the United States, or Executive orders of the President." The court of claims reasoned that this language could only be interpreted, in the context of Indian claims, as intended to create claims based on land set aside as reservation land under an Executive order. The court stated:

> The only conclusion that can be drawn from the inclusion of such interests in the act is that Congress must have intended to make them compensable. Otherwise Congress would be doing a meaningless act -- granting the Indian Claims Commission and the Court of Claims jurisdiction to hear a class of cases for which no recovery can be had. *Id.* at 696.

The court of claims reasoning is sound, and has been supported by other scholars. *See, e.g.*, **Cohen's Handbook of Federal Indian Law** 496 (R. Strickland & C. Wilkinson eds. 1982).

Remedies

The nonconsensual partition of the Hoopa Valley reservation would create a claim for money damages whether or not the reservation has been recognized in the sense that word is used in the *Tee-Hit-Ton* opinion, because at the very least, the affected Indians would have a statutory claim. In fact, the only difference in the amount of damages payable for a constitutional versus a statutory claim is that a constitutional claim entitles the plaintiff to interest on the award from the date the wrong occurred. *United States v. Sioux Nation*, 448 U.S. 371 (1980). Thus, the non-Hoopa tribal members would still be entitled to the difference between the fair market value and the amount, if any, actually paid. Given the estimated value of the timber on the Square, a successful statutory claim would subject the government to considerable liability.

In addition, I agree with Professor Clinton that the nonconsensual partitioning of the Hoopa Valley reservation can be enjoined as a prohibited taking of property for private instead of public use. Normally, when the government pays compensation for a taking this fact by itself demonstrates the public use requirement has been met. The theory is that a government's willingness to compensate for the loss of property, even property that will eventually be in the hands of private parties, demonstrates, absent extraordinary evidence to the contrary, that the purpose of the taking is to benefit the public at large. See L. Tribe, **American Constitutional Law** 590 (2d. ed. 1988). The most recent challenge based on the public use requirement, *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), failed primarily because the loss of land was compensated and because of the unique situation of land tenure in Hawaii, in which a few people owned most of the land in the islands, necessitated a redistribution plan. In fact, although private tenants benefited from the land redistribution, the redistribution plan itself was a classic case of taking from the few to benefit the many, a public use under the fifth amendment takings clause. As the Court stated, "Regulating oligopoly and the evils associated with it is a classic exercise of the police power." *Id.* at 242.

By contrast the nonconsensual partition of the Hoopa Valley reservation would have the perverse effect of taking from the many and redistributing to the favored few valuable timber reserves, thus creating an oligopoly instead of regulating it. The public at large, even if the public is defined as the entire reservation population, will not benefit by this legislation. Thus, the non-Hoopa members should be able to enjoin the partition, which would be classified as "a purely private taking," and thus void. *Id.* at 245.

Finally, it must be noted that the equities are strong in a case involving congressional divestment of an Executive order reservation. Many of these reservations were created for friendly tribes who had no treaties with the United States because they never fought wars against the newcomers. The tribes inhabiting the Square and the Extension illustrate this point. Congress must not solve the admittedly complex problems on the Hoopa Valley Reservation by taking the property on the Square away from the Indians of the Extension. If it does so, attempting to avoid liability by claining using the excuse that the Executive order reservation inhabited by the Indians of the reservation for nearly 100 years is not property within the meaning of the takings clause is administering justice with an "evil eye and an unequal hand." *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Such an action surely will cause Indians across the country, not just those inhabiting Executive order reservations, to fear reprisals for successful court challenges of federal actions. Indeed, such an action might well impel the judiciary, whose careful opinions in the *Short* cases have protected the property rights on the entire reservation, to invalidate the law or hold it to be confiscatory, which would subject the federal government to enormous liability.

STATEMENT OF CAROLYN GEORGE EHRLICH

I am the daughter of Lagoon and Annie Crescent George. I was born on October 21, 1913 at Pecwan on the Klamath River on the Hoopa Valley Indian Reservation as were all of my brothers and sisters. On January 28,1935 my daughter Jacqueline Winter was born there also. My mother, who was a Yurok medicine woman and who took part in the Brush dance healing ceremonies, delivered her. About two weeks later we took her to the Public Health hospital in Hoopa; however, the doctor never gave her a birth certificate because she was born at home. Until I married Lewis Ehrlich, a white school teacher at Pecwan in 1938, she lived at Pecwan with me, her grandparents, and my sister Violet Moore and her children Barbara and Betty Safford and her half sister Lois George. When my daughter was thirteen, her step-father adopted her and claimed her as his own in order to give her a name and to get her a birth certificate.

Other than three years lived at Junction City (30 miles from the reservation) and in Red Bluff and Orland 100 miles away, we lived at 2440 K Street, Eureka, California. She attended the Marshall Elementary School and graduated from Eureka High School with honors in 1952.

I am writing this to discredit the testimony of Dale Risling, Hoopa Valley Business Council member, who testified in Sacramento before the Senate Select Committee on Indian Affairs. He said that my daughter was raised in Georgia.

Carolyn Ann George Ehrlich

Carolyn Ann George Ehrlich

State of California)
County of Humboldt)ss

Carolyn Ann George Ehrlich, being duly sworn, deposes and says: That she is over the age of 18 years and has resided in the State of California for more than five years.

Subscribed and sworn to before me on July 6,1988.

LORRAINE M. HOUGH
My Comm. Expires May 10, 1991

Lorraine M. Hough
Notary Public

STATEMENT REGARDING THE CLOSING OF THE KLAMATH-TRINITY HOSPITAL

By Jacqueline Winter, P.O. Box 847, Hoopa, CA 95546

On June 30, 1988 at the Senate Select Committee on Indian Affairs hearing in Sacramento, California, Dale Risling of the Hoopa Valley Business Council made a statement which I wish to refute. He said that because of the Puzz case the hospital was closed.

Boyd Jury, a non-Indian member of the Community Health Association's board of directors; said that the hospital was closed because Mad River, which is a hospital for profit group, refused to return the license which was for sixteen beds. The CHA has appealed to the State for its return. My husband talked with our neighbor and landlord Dr. Richard Ricklefs who said that this was true. Joyce Melton informed me today that she was helping to write a grant which would provide funding for the recruitment of doctors. In addition, the Association is looking for grants which would enable the group to run a non-profit hospital.

The Puzz decision which was handed down on April 8, 1988 by Judge Henderson only restricted the spending of reservation generated funds by the Hoopa Valley Tribe for litigation fees: attornys' fees, lobbyist expenses, and research expenses. This involved approximately $545,000 according to their 1987-88 proposed budget.

Karole Overberg, superintendent, N. Cal. agency, Redding said that there is no line item regarding the hospital in the proposed 1988-89 Hoopa Valley Tribe's budget.

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September 16, 1988

The Honorable Daniel K. Inouye
Chairman
Senate Select Committee on Indian Affairs
SH-838, Hart Senate Office Building
Washington, D.C. 20510-6450

Dear Senator Inouye:

Simpson Timber Company is concerned with potential impacts of S. 2723 and H.R. 4469, legislation that would partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians.

Approximately 27,500 acres of Simpson timberland is within the Hoopa Reservation Extension that would become the Yurok Reservation. The bill authorizes acquisition of land within the reservation. We understand from discussions with the staff of Mr. Bosco, the chief House sponsor, that the bill does not contemplate acquiring land by condemnation, eminent domain or other non-voluntary process.

We would urge, however, that the legislative history make it completely clear that no private land owner such as Simpson would have to involuntarily sell or exchange land as a result of this measure.

Similarly, Simpson is concerned about the right of way access provision of the bill. Access to the Klamath River along most of the Hoopa Reservation Extension is across Simpson's logging routes. Simpson currently tries to control access to reduce theft, vandalism and marijuana cultivation. Legal access across Simpson lands to the Klamath River would greatly magnify these problems and make it much more difficult for Simpson to take any corrective actions. Again, staff has assured us that no involuntary rights of way are contemplated by the bill.

However, we urge that this also be clarified in the legislative history.

Following is suggested language for the Senate report in order to meet these concerns:

> "It is the Committee's intent that, consistent with the Indian Reorganization Act of 1934, any acquisition of land or an interest in land, including rights of way, from private owners for the benefit of the Yurok Tribe pursuant to paragraph (3) [of Section 2(c)] shall occur only through voluntary negotiations and agreement with the private owners, and that no condemnation, power of eminent domain or other involuntary process shall be used."

We appreciate your attention to this matter, and ask that this letter be included in the Committee's hearing record for the hearing of September 14, 1988.

Sincerely,

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

By:
Richard L. Barnes
Counsel for Simpson Timber Co.

RLB/ecb
cc: Senator Evans
Senator Cranston
Senator Wilson
Rep. Bosco

JUNE 29, 1988

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON,D.C. 20510-6450

REGARDING: HOOPA VALLEY INDIAN RESERVATION

TESTIMONY OF WALT LARA SR., P.O. BOX 516 TRINIDAD,CA 95570
JUNE 30, 1988 BOARD OF SUPERVISIORS
COUNCIL CHAMBERS, ROOM 1450, 700 H STREET
SACRAMENTO, CALIFORNIA

DEAR COMMITTEE MEMBERS;

MY NAME IS WALTER LARA, SR., I AM A YUROK INDIAN, AND SERVE AS ONE OF THE TRADITIONAL CEREMONIAL LEADERS OF THE YUROK PEOPLE. I OWN ALLOTED LAND AS WELL AS PRIVATE LAND WITHIN THE EXTENSION OF THE HOOPA VALLEY INDIAN RESERVATION. I AM HERE TODAY, WHAT I HAVE TO SAY, I HOPE YOU WILL HEAR AND TAKE THE TIME TO LISTEN SO THE RECORD WILL BE SET STRAIGHT. I AM A YUROK AND A MEMBER OF THE YUROK TRIBE, BECAUSE OF PAST CONGRESSIONAL ACTIONS AND COURT DECISIONS SUCH AS JESSIE SHORT VS UNITED STATES AND THE PUZZ,ET AL VS UNITED STATES, ET AL., I HAVE BEEN TOLD I AM NOT A YUROK AND THE YUROK TRIBE DOES NOT EXIST, BUT THAT I AM AN INDIVIDUAL INDIAN OF THE RESERVATION. THE YUROK TRIBE IS THERFORE UNREPRESENTED AND DOES NOT RECEIVE SERVICES SUCH AS THOSE PROVIDED BY ECONOMIC DEVELOPMENT ASSISTANCE, HEALTH, EDUCATION,AND WELFARE . WE DO NOT RECEIVE MONIES IN THE AREA OF BUSINESSES OR JOBS, WE DO NOT RECEIVE TECHNICAL ASSISTANCE OR JOB TRAINING. WE ARE NOT ALLOWED MONIES FROM REVENUE SHARING OR MONIES FOR OPERATING FUNDS. WE DO NOT RECEIVE HOUSING ASSISTANCE, LAND ASSIGNMENTS AND WE ARE EXCLUDED FROM JOB PREFERENCE TO WORK ON THE EXTENSION OF THE HOOPA VALLEY INDIAN RESERVATION.

EXAMPLE, WHEN WE TRIED TO BUY A CAMPGROUND AND BOAT DOCK FACILITY OR PARTICIPATE IN THE SURPLUS PROPERTY SHARING PROGRAMS, THE BUREAU OF INDIAN AFFAIRS HAS REFUSED TO ASSIST US BECAUSE WE ARE NOT AN ORGANIZED TRIBE. WHEN WE TRIED TO IMPROVE THE LIVING CONDITIONS OF THE YUROK PEOPLE THE BUREAU OF INDIAN AFFAIRS TOLD US THAT THEY WERE NOT IN THE HOUSING AND RENTING BUSINESS. "BY YOUR OWN LAWS," "SINCE WE ARE NOT ORGANIZED," OUR CHILDREN ARE NOT ENTITLED TO EDUCATIONAL BENEFITS OR PROGRAMS UNLESS THEY ARE ONE-HALF INDIAN OR MORE. THIS IS CRITICAL BECAUSE WE HAVE COME A LONG WAY IN PROVIDING EDUCATION TO OUR CHILDREN AND THEY ARE FORCED TO FACE A NEW TRANSITION INTO A WORLD OF COMPUTERS YOU CANNOT EVEN GET A JOB IN A GROCERY STORE IF YOU CAN'T UNDERSTAND COMPUTERS. HOW ARE WE SUPPOSE TO PREPARE OUR CHILDREN FOR THIS TRANSITION IF WE CAN'T RECEIVE EDUCATION ASSISTANCE. LET ME MAKE SOMETHING CLEAR HERE, WE ARE NOT ASKING FOR HANDOUTS. WE ARE ASKING FOR OUR ENTITLEMENTS WHICH WERE PROMISED US. WHEN OUR ANCESTORS ALLOWED THE UNITED STATES TO OCCUPY OUR TRADITIONAL HOMELANDS. YOU AS MEMBERS OF THE GOVERNING BODY OF THIS COUNTRY HAVE A RESPONSIBILITY TO FULFILL THOSE PROMISES , SO I DO NOT LIKE TO HEAR ANYTHING ABOUT HANDOUTS, OR BECAUSE WE ARE UNORGANIZED OR ONE-HALF DEGREE INDIAN THAT WE ARE NOT ENTITLED TO THE SERVICES.

WE HAVE TRIED TO ORGANIZE BUT THE JESSIE SHORT CASE AND THE BEAVER CASE HAVE PREVENTED THE BUREAU OF INDIAN AFFAIRS FROM ASSISTING THE YUROK INDIANS IN OUR ATTEMPTS TO ORGANIZE. THE PUZZ CASE TELLS US THAT WE ARE NOT A TRIBE OR YUROK, BUT JUST INDIVIDUAL INDIANS ON THE RESERVATION. WE DID NOT SANCTION THE PUZZ CASE OR THE BEAVER CASE EITHER BY REFERENDUM OR BY POWER OF ATTORNEY AND THEY HAVE NO PROOF THAT THEY REPRESENTED US AS IMPLIED BY ET. AL.. IT IS ABOUT TIME THAT THE MINORITY INDIANS (YUROK TRIBE) OF THE RESERVATION HAVE SOMETHING TO SAY ABOUT THEIR DESTINY. WE HAVE BEEN FEDERALLY RECOGNIZED AS A TRIBE AND WISH TO EXERCISE THOSE RIGHTS OF A TRIBE, WHICH INCLUDE A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE YUROK TRIBE AND THE UNITED STATES.

WE WANT ISSUES WHICH AFFECT US TO BE NEGOTIATED WITH LEADERS OF THE TRIBE SELECTED BY A DEMOCRATIC PROCESS AND NOT WITH INDIVIDUAL INDIANS.

IN OUR LAST ELECTION TO VOTE TO ORGANIZE, 44% PERCENT WERE FOR AND 56% PERCENT WERE AGAINST. WE GAVE EVERYONE THE OPPORTUNITY TO PARTICIPATE IN THE ELECTION IN ACCORDANCE WITH THE BUREAU OF INDIAN AFFAIRS 25 CFR RULES AND REGULATION.

GENERAL COUNCIL CONCEPT, THAT WE GIVE ALL PEOPLE WHO CAN PROVE THAT THEY ARE DESCENDANT OF YUROK PEOPLE FROM THE RESERVATION AN EQUAL OPPORTUNITY TO PARTICIPATE. WE DID THIS SO THAT THERE WOULD NOT BE ANY MISTAKES AND THAT WE WOULD BE ACCEPTED AS AN ORGANIZED TRIBE. IN THE END, WE HAD PEOPLE VOTING WHO WERE ALREADY MEMBERS OF AN ORGANIZED TRIBE OR RANCHERIA THAT ALREADY HAVE SERVICES, SUCH AS SERVICES MENTIONED PREVIOUSLY. THE 56% VOTED AGAINST ORGANIZATION, THESE PEOPLE THINK THEY WILL LOSE CERTAIN RIGHTS SUCH AS THEIR JESSIE SHORT MONEY, FISHING RIGHTS OR THE RIGHT TO COMMERICAL FISH IF THE YUROKS ARE ALLOWED TO ORGANIZE. SO AS YUROK INDIANS WE LOSE AGAIN, ALL WE WANT ARE THE SAME OPPORTUNITIES THAT OTHER TRIBES, WHO ARE ORGANIZED HAVE. WE WANT THIS FOR OUR CHILDREN AND GRAND-CHILDREN AN EQUAL CHANCE. WE HAVE ACCOMPLISHED MANY THINGS OVER THE YEARS WITHOUT THESE ADVANTAGES AND HAVE PROVEN THAT WE ARE WILLING TO WORK AND PROVIDE. WE FACE THE CHALLENGE OF THE FUTURE AND ASK THAT WE BE ALLOWED THE NECESSARY TOOLS AND MONEY TO COMPETE AND MEET WITH THE MANY ISSUES CONFRONTING US.

THIS MONTH WE SENT TWO DELEGATES OF THE 44% PERCENT OF OUR PEOPLE WHO WANTED TO ORGANIZE TO WASHINGTON D.C. TO TESTIFY ON THE BOSCO BILL WHICH WILL SPLIT THE RESERVATION. OUR DELEGATES WERE NOT ALLOWED TO SPEAK BECAUSE THE PUZZ ATTORNEY AND THE JESSIE SHORT PEOPLE TOOK UP ALL THE TIME, SO AGAIN THE MINORITY WERE NOT ALLOWED AN OPPORTUNITY TO PRESENT OUR VIEWS ON THIS MATTER.

SPEAKING AS A TRIBAL MEMBER, I DO NOT WANT THE RESERVATION TO BE SPLIT.

I WOULD LIKE TO REGAIN THE ORIGINAL BOUNDARIES AND LAND OF THE RESERVATION AND KEEP THE RIGHTS THAT WE ALREADY HAVE .I WOULD LIKE TO SEE TWO BUSINESS COUNCILS HOOPA AND YUROK ESTABLISHED AND ONE GENERAL COUNCIL MADE UP OF BOTH TRIBES TO MANAGE OUR NATURAL RESOURCES.

IF WE ARE ORGANIZED IN SUCH A MANNER WE COULD PARTICIPATE IN RESOLVING THE JESSIE SHORT CASE, AND CONTRACT OUR RESOURSES MANAGEMENT, LAW ENFORCEMENT, SOCIAL SERVICES, HOUSING, EDUCATION, ETC. IN THE EVENT THE RESERVATION IS SPLIT, WE WOULD LIKE TO PARTICIPATE IN THIS PROCESS AS AN ORGANIZED TRIBE INSTEAD OF ATTORNEYS OR INDIVIDUALS REPRESENTING THEMSELVES, SUCH AS IN THE PUZZ CASE WHERE ONLY SIX PEOPLE ARE REPRESENTED. WE DO NOT WANT TO BE DICTATED TO BY THESE INDIVIDUALS AND TOLD THAT WE ARE NOT YUROKS, BUT JUST INDIVIDUALS OF THE RESERVATION. WE WANT IT TO BE ENTERED AND RECOGNIZED THAT WE ARE YUROK INDIANS AND DESCENDANTS OF THOSE YUROKS WHO LIVED HERE BEFORE US AND THAT IF THE RESERVATION IS SPLIT, WE WANT IT TO BE RECOGNIZED AS THE YUROK RESERVATION. IF THOSE OTHER INDIANS WISH TO REMAIN INDIVIDUAL INDIANS OF THE RESERVATION, LET THEM ESTABLISH A NEW RESERVATION AND LET IT BE KNOWN AS THE OTHER RESERVATION, AND LET THOSE INDIANS BE KNOWN AS THOSE INDIANS FROM THE OTHER TRIBE. AS A TRADITIONAL TRIBAL CEREMONIAL LEADER OF THE YUROK TRIBE, I'VE HOSTED, AND INSTRUCTED TRADITIONAL AND CEREMONIAL DANCES ON THE YUROK TRIBAL LANDS FOR YEARS. I'VE PARTICIPATED IN THE BRUSH DANCE, HEALING OF OUR CHILDREN. THE WHITE DEERSKIN DANCE REUNITING OF OUR PEOPLE AN ONE. THE JUMP DANCE CEREMONY AND PRAYERS FOR THE HEALTH AND WELFARE OF THE LIVES OF OUR PEOPLE. IT IS REQUIRED OF A CEREMONIAL LEADER TO TAKE PART IN THESE DANCES ON THE HOOPA RESEERVATION WITH THE HOOPA TRIBAL CEREMONIAL LEADERS AND PARTICIPATE WITH THE KAROK TRIBAL CEREMONIAL DANCES FURTHER UP THE KLAMATH RIVER ON THAT RESERVATION. LONG BEFORE THE WHITE ANTHROPLOIGIST AND ACHREOLOGIST ARRIVED AND WROTE OF OUR TRIBE AS PUT DOWN IN THE MANY VOLUMES IN THE ATTACHED REFERENCES "SEE EXHIBIT A" WE KNEW WHO WE WERE AND SPOKE AN INDIAN LANGUAGE THAT HAVE THESE VERY DISTINCT DELECTS AS SHOWN ON MY REFERENCE MAP "SEE EXHIBIT B " WHICH HAS NEVER BEEN RECORDED PROBABLY SO, BECAUSE IT WOULD ADD TO THE ALREADY CONFUSED MINDS OF THE WRITERS IN EXHIBIT A . THE PROBLEMS MIGHT SEEM MIND BOOGLIN, BUT THE SOLUTION MAY BE SIMPLE JUST LISTEN TO THE TRUTH.

ENCLOSURES ARCHAEOLOGICAL AND ANTHROPOLOGICAL REPORT
DENOTING YUROK AS A TRIBE
PLACES, NAMES, NOTING TRADITIONAL YUROK TERRITORY

XIBIT -A-

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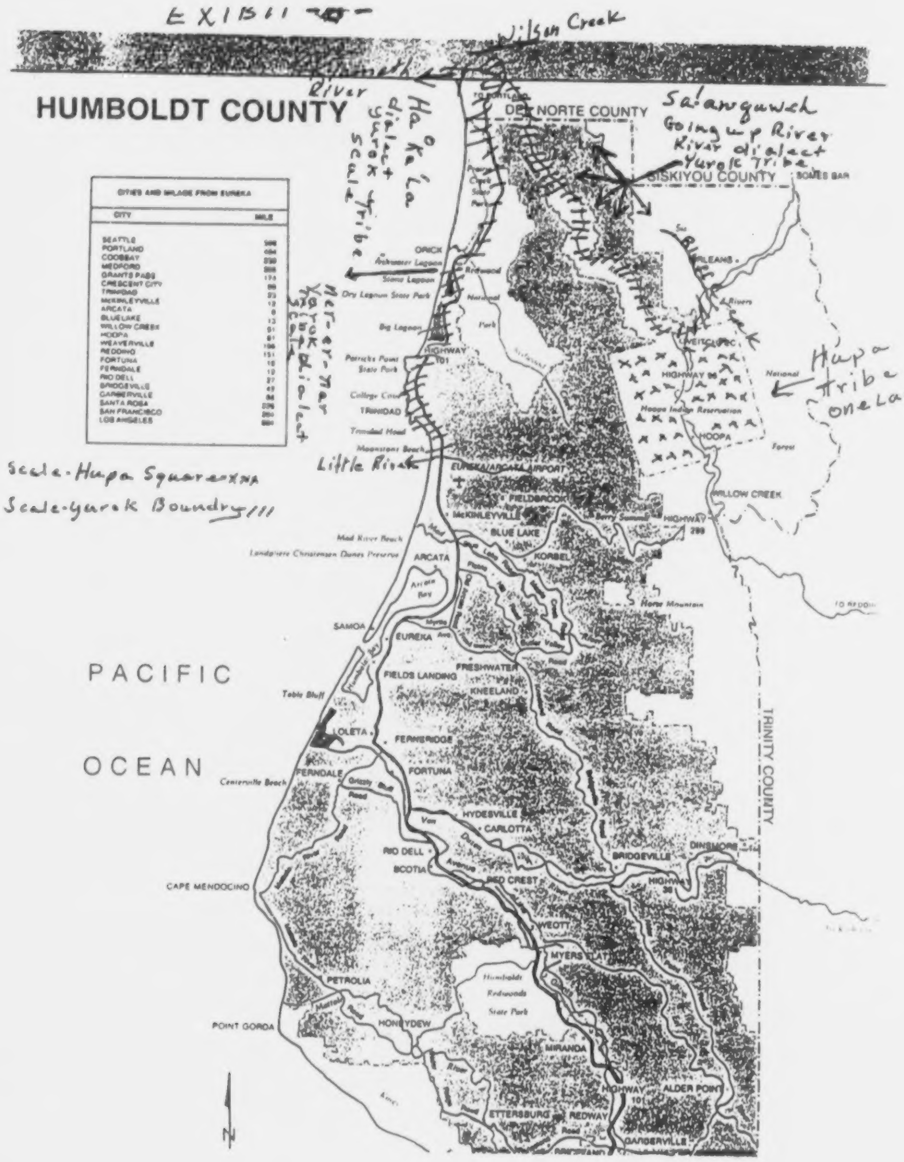
EXIBIT
Wilson Creek
Klamath River
HUMBOLDT COUNTY
Ha ka la dialect Yurok Tribe Scale
Sa'awguwch Going up River River dialect Yurok Tribe
DEL NORTE COUNTY
SISKIYOU COUNTY
SOMES BAR
Ner-er-ner Yurok dialect Scale
Hupa Tribe one Land
Little River
Scale-Hupa Square xxx
Scale-Yurok Boundry ///
CITIES AND MILEAGE FROM EUREKA
CITY
MILE
SEATTLE
PORTLAND
COOS BAY
MEDFORD
GRANTS PASS
CRESCENT CITY
TRINIDAD
McKINLEYVILLE
ARCATA
BLUE LAKE
WILLOW CREEK
HOOPA
WEAVERVILLE
REDDING
FORTUNA
FERNDALE
RIO DELL
BRIDGEVILLE
GARBERVILLE
SANTA ROSA
SAN FRANCISCO
LOS ANGELES
ORICK
Redwood National Park
Dry Lagoon State Park
Big Lagoon
HIGHWAY 101
Patricks Point State Park
TRINIDAD
Moonstone Beach
ORLEANS
WEITCHPEC
HIGHWAY 96
Hoopa Indian Reservation
HOOPA
WILLOW CREEK
EUREKA/ARCATA AIRPORT
FIELDBROOK
McKINLEYVILLE
BLUE LAKE
HIGHWAY 299
KORBEL
Mad River Beach
ARCATA
Arcata Bay
SAMOA
EUREKA
Horse Mountain
FRESHWATER
KNEELAND
FIELDS LANDING
PACIFIC OCEAN
Table Bluff
LOLETA
FERNBRIDGE
FORTUNA
FERNDALE
Centerville Beach
HYDESVILLE
CARLOTTA
RIO DELL
SCOTIA
BRIDGEVILLE
DINSMORE
TRINITY COUNTY
CAPE MENDOCINO
RED CREST
HIGHWAY 36
WEOTT
MYERS FLAT
Humboldt Redwoods State Park
PETROLIA
HONEYDEW
POINT GORDA
MIRANDA
ALDER POINT
ETTERSBURG
REDWAY
GARBERVILLE
N

POHLIK-LAH
Interim Governing Council

June 28, 1988

Dear Committee Member;

I am submitting this testimony on behalf of a number of Pohlik-Lah AKA Yurok Indian people who live on the Lower portion of the Hoopa Valley Indian Reservation and feel that we should have equal representation on what goes on here within the boundaries of this Reservation.

The Bureau of Indian Affairs and the U.S. Government do not want to recognize Pohlik-Lah as an Indian entity. Some of us can trace our ancestry back to the 1851 Pohlik or Lower Klamath River Indian treaty signers. We Pohlik-Lah people have a draft constitution in place, (see Attached) but the Bureau of Indian Affairs insist that we organize under the General Council Concept as Yuroks. Yurok is not a word in our own language. Pohlik-Lah is. We also want to emphasize that there is a mark difference between Indians who live on the reservation and those who live off the reservation. It seems like we who want a tribal government to manage our lands and resources as an Indian Tribe should, have to read the papers to find uot what the people have decided to do with us here on the Hoopa Valley Reservation.

Pohlik-Lah is Against the split of the Hoopa Reservation as it would be disastrous to split with out a tribal government in place. The B.I.A. has control over our destiny through the Puzz case. As we all know the Bureau of Indian Affairs have fraudulently made Indian people sell thier lands in order to sell thier timber resources and also have us practically give our fishery resource away in order to commercial them.

The state of California has always been anti- Indian and the B.I.A. works hand in hand with them with out any input from the Indian people. Now we have Congressman Doug Bosco trying to split the Hoopa Valley Reservation. The same conquer and divide tactic.

A lot of people who are involved with the Jesse Short Case and the Puzz Case are members of different Tribes and Rancherias and there for do not want aPohlik-Lah AKA Yurok Tribal government. They just want to reap the proceeds from the Hoopa Valley Reservation. Also we have Indians of less than a quarter blood speaking for us. They want the best of two worlds.

P.O. Box 559 • Klamath, CA 95548 • (707) 482-~~2556~~ 66.62

We as Pohlik-Lah AKA Yurok people would like a voice on what we want as we would like to get things settled in the proper manner so that we can get proceed with our every day life andto manage our lands and resources and to protect our culture as Indians of the Hoopa Valley Reservation.

The status of the Reservation today is very depressing to Indian people as non-Indians are commercialing off our resources and huge Timber companies are laying claim to our lands.

We want to thank you for taking our testimony as we feel it is important to us.

Sincerely

Walter McCovey Jr.

Walter McCovey Jr. Interim Chairperson

DRAFT

CONSTITUTION OF THE POHLIK-LAH TRIBE

KLAMATH RIVER PORTION OF THE HOOPA VALLEY INDIAN RESERVATION

PREAMBLE

We the Pohlik-Lah Tribe of the Klamath River portion of the Hoopa Valley Indian Reservation (herein after referred to as the Hoopa Valley Indian Reservation in order to form a recognized representative organization to manage all Tribal affairs, and to preserve and make secure our Reservation homeland, culture, religion, and identity; to safeguard our interests and general welfare, and sovereign rights; to improve the economic condition of ourselves and our Reservation; and to promote the common welfare of the Tribe, do hereby approve and adopt this Constitution.

ARTICLE I.

PURPOSE

The object and purpose of this Constitution is to promote and protect the interests and general welfare of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation and to preserve and promote peaceful and cooperative relations with other tribal, federal, state and local governments and other entities. To rebuild community structures and related social systems, be responsive to the needs of the general membership and assume full responsibility for self-government.

ARTICLE II.

TERRITORY

Section 1. Notwithstanding the issuance of any patent, the jurisdiction and governmental authority of the Pohlik-lah Tribe of the Hoopa Valley Indian Reservation shall consistent with applicable Federal law extend to (a) all lands, resources and waters reserved to the Pohlik-Lah Indians pursuant to the establishment of the Hoopa Valley Indian Reservation along the Klamath River, pursuant to the Executive Order of 1851 as extended and modified by the Executive Order of 1891; (b) to all persons acting within the boundaries of those reserved lands and waters; (c) to all Tribal members exercising Tribal hunting, gathering and fishing rights or carrying out Indian traditional religious activities within the aboriginal and traditional territory of the Pohlik-Lah Indians.

Section 2. General Welfare. It shall be the goal of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation to provide for the general safety, health and welfare of all persons acting by the right of membership in the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation and residing within the jurisdiction of the Pohlik-Lah Tribe.

ARTICLE III.

MEMBERSHIP

Section 1. Members. Any person who (a) is one-fourth degree or more Pohlik-Lah Indian blood, and (1) a member of the Pohlik-Lah Tribe of California Indians whose names appear on the official census roll, as it may be corrected, or (2) a child born to any member of the Pohlik-Lah Tribe of California Indians, or (3) an allottee or descendant of an allottee of the Klamath River Portion of the Hoopa Valley Reservation and can establish such descendancy by true and appropriate documentation.

Section 2. Adoption. Any person of one-eighth degree Indian blood which must include at least one-sixteenth degree Indian blood from a tribe (or tribes) of the Hoopa Valley Indian Reservation, but who does not meet the requirements for membership as of right in Section 1 above, may be adopted by recommendation of the Tribal Enrollment Committee and approval of two-thirds of the eligible voting members at the next annual General Council meeting as described in Article IV.

Section 3. Enrollment Committee.

(a) Membership. The Enrollment Committee shall consist of members of the Pohlik-Lah Tribe, consisting of at least one enrollment committee member from each Reservation District, appointed by the Business Committee of the Pohlik-Lah Tribe.

(b) Duties. The Enrollment Committee shall:

(1) accept applications for enrollment and adoption,

(2) investigate all applications for enrollment and adoption,

(3) approve all applications for enrollment where applicants qualify for membership in Pohlik-Lah Tribe under provisions of Section 1 of this Article,

(4) review all applications for enrollment under

Section 2 of this Article and submit the application of any applicant certified to meet the required Indian blood quantum and residence requirements, together with any Committee comment, to the Reservation District in which the applicant resides for action.

(5) a list of all persons approved for enrollment consideration during the time period between annual General Council meetings shall be published and posted publicly thirty days prior to the next annual General Council meeting in places on the Reservation determined by the Business Committee to be appropriate so as to inform the general membership of the pending enrollment. The names of all persons qualifying under Section 1 of this Article shall be presented at the next annual General meeting. All persons qualifying under Section 1 of this article and whose names were published shall be approved for membership unless substantial evidence is presented at the General Council meeting indicating that a particular applicant does not truly meet the requirements for membership under Section 1 of this Article.

(6) All persons qualifying for adoption under Section 2 of this Article and recommended for adoption by the Reservation District in which he or she resides

shall have their names presented to the next annual General Council meeting for consideration for membership. Any person so qualifying may be adopted as a member of the Pohlik-Lah Tribe by a two-thirds vote of the eligible members present at the General Council meeting at which their names are presented.

(7) Following each annual General Council meeting, a list of all officially approved members of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation shall be updated and made available to the Bureau of Indian Affairs and to all members, upon request.

(8) Following each annual General Council meeting, the Enrollment Committee shall give official formal notice to all persons who were denied enrollment either because lack of qualification under Section 1 of this Article, or who were not approved for adoption.

Section 4. Approved Applicants. All persons approved by the Enrollment Committee as qualifying for membership under Section 1 of this Article shall be considered members for all purposes until their names are presented at the next General Council meeting, provided, that such persons shall not be permitted at the meeting for which their enrollment is being considered to vote on the enrollment or adoption of any person and further to be eligible to vote on other matters the newly enrolled person shall otherwise be required to meet the residency requirement for voting stated in Article IV.

Section 5. Disenrollment. Any member who is enrolled with another tribe, band or community may lose his/her membership in the Pohlik-Lah Tribe. Such persons may be deleted from the membership rolls after they have been given an opportunity to be heard on their own behalf. The Enrollment Committee shall maintain a current membership roll and, whenever necessary, shall delete from the roll those Indians whose names appear on the rolls of the Pohlik-Lah Tribe and who have (1) elected to sever their Tribal relations and have so stated in a notarized letter.

Section 6. Proviso. Disenrollment or failure to qualify for enrollment or adoption shall not deprive anyone of vested property rights, such as allotments or inherited interests, nor shall it deprive anyone otherwise recognized and listed by the Bureau of Indian Affairs as eligible to exercise limited hunting and fishing rights on the Hoopa Valley Indian Reservation from the enjoyment of such privileges.

ARTICLE IV.

MEMBERSHIP VOTING RIGHTS

Only those members who have resided on the Hoopa Valley Indian Reservation or have been enrolled with the Pohlik-Lah Tribe for a minimum of one year and have achieved the age of eighteen years shall be entitled to (1) vote in any Reservation matter including Tribal or District Council elections, (2) off-Reservation members of the Pohlik-Lah Tribe shall be entitled to hold elected office on any Reservation District Council or the Pohlik-Lah Business Committee only after they have been enrolled for two years, and are 21 years of age. (3) Any person whose name does appears on the membership roll of another tribe will be ineligible to vote.

Proviso I. Off-Reservation enrolled Pohlik-Lah members residing outside reservation boundaries have the right to vote on all matters, except those relating to land transfers, hunting, fishing, gathering, environmental and water resource and termination issues.

ARTICLE V.

TRIBAL GOVERNMENT

Section 1. General Council. The General Council shall be made up of all members of the Pohlik-Lah Tribe of the Klamath River portion of the Hoopa Valley Indian Reservation who meet the residence voting requirements as stated in Article IV of this Constitution.

1. The General Council of the Pohlik-Lah Tribe shall meet at least once annually a Notice of the scheduled meeting shall be posted thirty (30) days in advance.

3. The Business Committee shall set the meeting date.

4. The purpose of the General Council meeting shall be to consider matters and issues of concern to the general

membership and to provide guidance and recommendations to the Business Committee on matters concerning the governing of reservation affairs.

Section 2. Governing Body. The governing body of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation shall be a council known as the Pohlik-Lah Business Committee.

(1) The Governing Body shall consist of nine (9) Council persons to be elected from the districts of the Reservation as set forth hereafter.

(2) Representation from the districts hereby designated shall be as follows: Three (3) Councilpersons; (Upper Klamath portion of the Hoopa Valley Indian Reservation) Three (3) Councilpersons; (Lower Klamath portion of Hoopa Valley Indian Reservation) Three (3) Council Representatives elected at-large to represent off-reservation tribal members.

(3) The General Council shall have the power to change the districts and the representation from each district based upon village size or groupings, or otherwise, as deemed advisable, such change to be made by ordinance, provided that the total number of Councilpersons shall not be changed unless by amendment to this Constitution.

(4) The Chairperson and Vice-Chairperson shall be elected representatives of the Business Committee with one chosen from the upper portion, and one chosen from the lower portion of the Hoopa Valley Indian Reservation. The Business Committee so organized shall elect from within its own members the Chairperson and the Vice-Chairperson from those representatives to the

Committee elected from on-reservation districts.

(5) The Secretary to the Business Committee may be hired from within or without the tribal membership.

(6) No person shall be candidate or otherwise serve as a member of the Pohlik-Lah Business Committee unless he/she is a member of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation and shall have resided in the district of his/her candidacy for a period of not less than two (2) years preceding the election, and be at least twenty-one (21) years of age, furthermore have no brother, sister, father, mother, husband, wife, son, or daughter presently serving on the committee.

ARTICLE VI.

BUSINESS COMMITTEE OPERATION

Section 1. Quorum. The quorum for the Busines Committee to conduct business shall consist of at least five (5) committee members, including the Chairperson or Vice Chairperson, and decisions shall be made by a majority vote of the quorum present. All members of the Business Committee shall have the right to vote on all issues brought before the Business Committee. The majority of the quorum must consist of the on Reservation Representives.

Section 2. Election. The officers of the Pohlik-Lah Business Committee of the Klamath River Portion of the Hoopa Valley Indian Reservation shall be elected by qualified voting members of the Tribe residing in the Reservation District from which they are elected and shall serve three (3) year terms.

Election shall be by secret ballot according to procedures determined by the Business Committee.

Section 3. Vacancies and Removal from Office. If a Councilmember or official shall die, resign, be removed, move their residence from the Reservation, or shall be found guilty of a felony involving dishonesty or a misdemeanor involving dishonesty in any Indian, State or Federal court, the Business Committee shall declare the position vacant and shall appoint a member from the district affected to fill the unexpired term.

(1) The Business Committee may by 2/3 vote of full committee expel any member for cause. Before any vote for expulsion is taken, such member or official shall be given a written statement of the charges or reasons for expulsion against him or her at least five days before the meeting of the Business Committee at which the matter of expulsion is to be decided, and shall be given an opportunity to answer any and all charges at the designated Business Committee meeting. Decisions of the Business Committee shall be final.

(2) The Reservation District from which a Business Committee representative is elected may initiate a petition based on 25% of the eligible tribal voters of such district for the recall of any member of the Business Committee. In submitting the recall vote to the Business Committee, such Reservation District shall include a written statement of the charges against the Business Committee officer. It shall be the duty of the Business Committee to call a district election on such recall petition, and to provide the official, subject to recall, an

opportunity at the election to answer any and all charges against him or her by a written statement of not more than 500 words. The ballot to be voted on at such special district recall election shall contain the charging part of the complaint made by the Reservation District referred to above. No member may be recalled at any such elections unless at least 40% of the eligible voters of the district shall have voted in such election and unless a majority of those voting vote in favor of the recall.

(3) In cases where there is a Business Committee vacancy caused by recall of a Business Committee member, the Reservation District Council affected shall, upon certification that the Constitutional requirements of the recall have been met, provide for the nomination of a new duly qualified member to fill the Business Committee vacancy for that district. If no such nomination is made within thirty (30) days following the recall of a member, the Business Committee shall initiate a nomination and election.

Section 7. Meetings. Regular open meetings of the Business Committee of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation shall be held at least once in each month on a regular schedule set by the Business Committee. Special meetings of the Business Committee may be called by the Chairperson or the Vice Chairperson on 48 hour notice to all Business Committee members. Executive sessions of the Business Committee may be held in closed session on all matters pretaining to personnel and legal matters. All regular meetings of the Business Committee shall be held within the boundaries of the Klamath River portion of the Hoopa Valley Indian Reservation.

Section 8. Bylaws. The Business Committee of the Pohlik-Lah Tribe shall by ordinance adopt its own procedures and duties of officers, except as herein provided.

ARTICLE VII.

POWER AND RESPONSIBILITIES OF THE BUSINESS COMMITTEE

Section 1. General Powers. All rights, powers and authority of the Pohlik-Lah Indians of the Hoopa Valley Indian Reservation are hereby conferred upon the Business Committee of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation. It shall be the duty of the Business Committee to govern all people, resources, lands and waters reserved to the Indians of the Klamath River portion of the Hoopa Valley Indian Reservation in accordance with executive orders, such laws as may hereinafter be adopted by the Business Committee of the Pohlik-Lah Tribe or determined by any court of competent jurisdiction, such limitations as may lawfully be imposed by the statutes or the Constitution of the United States, and subject to the primary jurisdiction of the Hoopa Valley Tribe with respect to activities and lands within the Hoopa Square of the Hoopa Valley Indian Reservation as defined by executive order 1876. All rights, powers and authority, expressed, implied, or inherent, vested in the Pohlik-Lah Tribe but not expressly referred to in this Constitution, shall not be abridged by this Article but shall be exercised by the Business Committee by the adoption of appropriate ordinances, laws and agreements.

Section 2. Exceptions. Any action of the Business Committee with regard to the following rights and powers shall be void and of no legal effect without the consent of two-thirds of the eligible voting members of the Pohlik-Lah Tribe subject to limitations of off-reservation voters as described in Article IV.

(a) The relinquishment of any criminal or civil jurisdiction of the Pohlik-Lah Tribe to any agency, public or private, provided that this Section shall not prevent the Business Committee from commissioning non-Tribal or non-Bureau of Indian Affairs law enforcement officers to enforce laws and regulations of the Pohlik-Lah Tribe, and shall not otherwise prevent the Business Committee from entering into cooperative law enforcement arrangements with other tribal, federal, and state jurisdictions.

(b) Termination of the Hoopa Valley Indian Reservation or of the Pohlik-Lah (or Yurok) Tribe.

(c) The adoption of persons as members of the Pohlik-Lah Tribe under Article III of this Constitution.

(d) The Sale or extinguishment of any hunting, fishing or gathering rights, grounds or stations.

Section 3. Laws. The Business Committee shall have the power to enact laws for the welfare, health and safety of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation provided, that such laws are not in conflict with this Constitution. Laws may be enacted in the form of statutes, regulations, ordinances or resolutions. Any significant matter for which the enactment of a law is being considered shall, upon determination of significance by the Business Committee or the General Council or the Pohlik-Lah Tribe, be considered at public hearings held at such points on the Klamath River portion of the Hoopa Valley Indian Reservation so as to allow all interested members to attend, prior to law's final adoption.

Section 4. Enumerated Powers. The Business Committee shall have the following enumerated powers to be exercised consistent with this Constitution and the applicable laws of the Pohlik-Lah Tribe:

(a) To enter agreements on behalf of the Pohlik-Lah Tribe with federal, state and local governments or agencies, and other public private organizations or persons.

(b) To provide for the execution and enforcement of the laws of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation, and to establish an independent Tribal court, including judicial districts consistent with the Reservation Districts provided for under this Constitution, and to provide by law the jurisdiction, procedures, and appointment or election of judges of the court.

(c) To charter and regulate associations, corporations for profit and non-profit, Reservation Districts, schools, financial institutions, and to establish enterprises under the Tribal government.

(d) To levy and collect taxes on members and other members and other persons or entities within the Tribe's jurisdiction, provided that no tax shall be levied on trust real property, and further provided that no tax shall be levied on members of the Hoopa Valley Tribe subject to the jurisdiction of that Tribe, and further provided that no tax shall be levied without holding public hearings at such convenient times and places so as allow all interested members of the Pohlik-Lah Tribe and any others subject to its jurisdiction to comment on the need for, and effect of, such a tax.

(e) To assert the defense of sovereign immunity in suits brought against the Pohlik-Lah Tribe and to waive such defense by agreement where no Tribal land nor land held in trust by the United States is pledged.

(f) To govern the sale, disposition, and leasing of Tribally owned assets, and to provide for the zoning and other land-use regulation of all lands within the boundaries of the Reservation subject to the jurisdiction of the Pohlik-Lah Tribe, except the Hoopa Square, and to provide for the purity, volume and use of all water, air and other resources to which the Pohlik-Lah Indians of the Hoopa Valley Indian Reservation are entitled.

(g) To manage, protect and preserve the wildlife and natural resources of the Pohlik-Lah Tribe and to regulate hunting, fishing, the gathering of shellfish and plants, and trapping on the Hoopa Valley Indian Reservation except for the Hoopa Square and elsewhere within the jurisdiction of the Tribe.

(h) To manage, lease, permit, and regulate Tribally owned lands, Tribally owned interests in lands, water rights, mineral rights, hunting and fishing grounds, fish and wildlife resources, timber resources, or other Tribally owned assets, and to purchase or otherwise acquire lands, interests in lands or resources within or without the Reservation and to hold those lands in Tribal or federal trust for the benefit of the Pohlik-Lah Tribe, and provided that such management and regulation shall not deprive anyone, whether or not a member of Tribe, of vested property rights such as allotments or inherited interests or of the privilege of hunting or fishing if such person is deemed to be entitled to exercise hunting or fishing rights as an Indian of the Hoopa VAlley Indian Reservation and if so identified on an official list prepared by the Secretary of the Interior or his designate.

(i) To regulate allotted trust and non-trust lands within the Klamath River portion of the Hoopa Valley Indian Reservation boundaries, with the exception of the Hoopa Square, as described by executive order cf 1876, insofar as such regulation is not prohibited by federal law and does not deprive the owner of a vested property rights.

(j) To administer any funds within the control of the Pohlik-Lah Tribe in accordance with an approved Tribal budget, and to make expenditures from available funds for Tribal purposes and to fulfill Tribal obligations. The Business Committee shall prepare an annual Tribal budget, which includes all operation expenses, salaries and expenses of Tribal officials, projected expenditures contemplated by the Tribe, and any anticipated legal expenses. All obligations of Tribal funds by the Business Committee shall be approved by the Business

Committee at a duly convened meeting and the amounts so expended shall be a matter of public record. The Business Committee shall have the authority to approve amendments to the annual Tribal budget for special appropriations in any budget year. The approved Tribal budget shall be posted at the Tribal Business Office and at the offices of each Reservation District Council on the Klamath River portion of the Hoopa Valley Indian Reservation.

(k) To engage in any business that will further the economic well being of the Tribe and members of the Tribe, and to undertake any program or projects designed for the economic advancement of the Tribe or the Reservation, and to regulate the conduct of all business activities within the Hoopa Valley Indian Reservation except on the Hoopa Square as defined by the Executive order of 1876.

(l) To borrow money from the federal government or other sources, to direct the use of such funds to productive Tribal purposes, and to pledge or assign chattels or income due or to become due for repayment of Tribal loans.

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(m) To provide for an escheat in order that real and

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personal property of members who die intestate and without heirs shall revert to the Tribe.

(n) To approve any sale, disposition, lease or encumbrance of Tribal lands, interests in lands, or other trust lands anywhere on the Hoopa Valley Indian Reservation.

(o) To condemn land or interests in lands for public purposes within the boundaries of the Hoopa Valley Indian Reservation, provided that owners of any lands condemned shall be paid the fair market value of such lands and any timber or buildings thereon.

(p) To confer and counsel with the Hoopa Valley Tribe and where appropriate, with the Secretary of the Interior, for the management of lands and resources held jointly for or by the Pohlik-Lah and other Tribal groups and their members, including real property, wildlife, fish and other natural resources.

(q) To enact all laws which shall be necessary and proper for carrying into execution any power delegated to the Business Committee or to any person or committee under the supervision of the Business Committee, provided that on petition by 25% of the voting members of the Tribe or on Motion of the Business Committee, the Business Committee shall subject any law deemed to be of significance to a vote of approval or recission by the General Council at the next General Council meeting following receipt of the petition.

(r) To govern and regulate domestic relations and to appoint guardians, provided that such powers may be delegated as appropriate to the Reservation District Council governments.

(s) To employ legal counsel.

(t) To exclude and expel from trust, restricted and Tribal lands on the Hoopa Valley Indian Reservation persons not legally entitled to reside thereon, the exclusions or expulsion from trust or restricted lands being subject to appeal to the Secretary of the Interior.

(u) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, providing for the assessments or license fees upon non-members doing business within the Hoopa Valley Indian Reservation, or otherwise enjoying or partaking of Reservation resources, rights or privileges.

(v) To delegate to the Reservation District Council, as appropriate, such powers and authorities as will facilitate the Districts in the management of District and local affairs, the furtherance of Tribal relations within the District, and the protection and advancement of Tribal culture, religion, traditions and arts, provided that no such delegation may discriminate between Reservation Districts.

(w) To determine procedures of the Tribal Business Committee, and to create such committees and advisory groups as it deems necessary to assist it in its work.

ARTICLE VIII

RESERVATION DISTRICT COUNCIL.

For purposes of carrying out governmental duties of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation, Reservation Districts shall be designated based on the geographic divisions of villages and groups of villages of the Reservation, except that the primary jurisdiction for the Hoopa Square shall continue to reside with the Hoopa Valley Tribe.

(1) The initial local districts shall be designated as described in Section 2, paragraph (2), above, and may be modified as appropriate according to Section 2 paragraph (3), above.

(2) Members of the Pohlik-Lah Tribe qualified to vote

under Article IV of this constitution who reside in a designated Reservation district shall determine for themselves the governmental form and additional local (District) responsibilities of their Reservation District Council Representative subject to the provisions of this constitution.

ARTICLE IX

RATIFICATION

This Consitution shall become effective when ratified by two-thirds of all persons eligible to vote as members of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation under Article III of this Constitution, present and voting at a General Council meeting at which a debate and vote on this Constitution has been placed on the public agenda. All persons eligible for membership, as stated in Article III, Section 1, in the Pohlik-Lah Tribe under this Constitution shall be notified of such a General Council meeting at least thirty (30) days prior to such a meeting, and the notice provided shall state the requirements for eligibility to vote in the election, shall make specific reference to the proposed ratification of this Constitution, and shall provide information on where a copy of the Constitution may be obtained prior to the meeting. At the General Council meeting where this Constitution is ratified, a provisional Business Committee shall be elected by a majority vote of the voting members present at the General Council meeting. Such Business Committee shall be constituted for one year and shall be charged with the duty of establishing the

Enrollment Committee and working with each District to establish the appropriate mechanisms for election of a regular Business Committee under this Constitution within one year after its ratification.

ARTICLE IX

AMENDMENT

Section 1. This Constitution may be amended by a two-thirds vote of eligible voters at an annual or special meeting, provided, however, that the notice of the meeting at which an amendment is proposed shall be given at least thirty (30) days before the meeting, and shall set forth specifically the proposed amendment and an explanation thereof.

Section 2. The Business Committee shall call a meeting to consider a proposed amendment on its own motion, or on receipt of a petition signed by 25% of voting members of the Pohlik-Lah Tribe of the Hoopa Valley Indian Reservation.

ARTICLE X

ENFORCEABILITY

The provisions of this Constitution shall be enforceable in the Tribal Court of the Pohlik-Lah Tribe, and in the federal courts of the United States where provided by federal law, and shall not be enforceable in any other court except where the Business Committee of the Pohlik-Lah Tribe brings suit in its own name in such other court. This Article shall not be interpreted as a consent to suit or a waiver or sovereign immunity by the

Pohlik-Lah Tribe of the Klamath River portion of the Hoopa Valley Indian Reservation.

ARTICLE IX

APPROVAL OF THE SECRETARY OF THE INTERIOR

The Secretary of the Interior shall have the power to review actions taken pursuant to the general and enumerated powers provided for under this Constitution in those cases and only to the extent that the Secretary has been given such powers of review by expressed statutory command of the congress of the United States.

Walter McCovey Jr., Chairperson	Date
Bertha Mitchell, Vice-Chairperson	Date

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